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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~637.~~ 550

CALVIN AMORY STEVENS, EUGENE KELLY AND JOHN T. TERRY

Appellants,

vs.

THE NASHVILLE AND CHATTANOOGA RAILROAD COMPANY, AND THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 8, 1881.

UNITED STATES SUPREME COURT.

No.

CALVIN AMORY STEVENS, EUGENE KELLY and JOHN T. TERRY, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Nashville and Chattanooga Railroad Company,

vs.

THE NASHVILLE, CHATTANOOGA and ST. LOUIS RAILWAY COMPANY.

TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States, Sixth Judicial Circuit, Middle District of Tennessee.

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United States Circuit Court,

Sixth Judicial Circuit, Middle District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Nashville and Chattanooga Railroad Company,

versus

The Nashville, Chattanooga and St. Louis Railroad Company et al.

BILL FOR RELIEF.

E. L. ANDREWS and
GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

United States Circuit Court,

Sixth Judicial Circuit, Middle District of Tennessee.

IN EQUITY.

To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Middle District of Tennessee.

Your orator, Calvin Amory Stevens, who is a citizen of the State of New York, brings this, his bill of complaint, against the Nashville, Chattanooga and St. Louis Railroad Company and the Nashville and Chattanooga Railroad Company, which are citizens of the State of Tennessee, and corporations organized, existing, and transacting business in said State by virtue of, and under, an act of the General Assembly of said State.

And thereupon your orator, complaining, shows unto your Honors that he brings this bill of complaint, as well on behalf of all other holders of the Internal Improvement bonds loaned by the State of Tennessee to the Nashville and Chattanooga Railroad Company, who may join in the prosecution and contribute to the expenses of this litigation, as on his own behalf as a holder of said bonds.

Your orator shows that the Nashville and Chattanooga Railroad Company was a body, politic and corporate, chartered by acts of the General Assembly of the State of Tennessee, passed in 1845 and thereafter. The object and purpose of the creation of said corporation, by the said several charters, was the construction, completion, and, thereafter the operation and management of a line of railway for the transportation of passengers and freight from

the city of Nashville, in the State of Tennessee, through the territory of the State of Tennessee, to the city of Chattanooga.

For this purpose powers were granted to said corporation, as are declared in the several charters and acts of incorporation. The said corportion was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for, and insure the payment of, its liabilities.

Your orator shows that, pursuant to law, the name of the Nashville and Chattanooga Railroad Company, after it was united with other railroad corporations in the State of Tennessee, was changed to the Nashville, Chattanooga and St. Louis Railroad Company.

Your orator makes part of this, his bill of complaint, the said several charters and acts, with their several amendments, passed by the legislature of Tennessee, and attaches copies thereof, marked Exhibit A.

Your orator shows that the General Assembly of the State of Tennessee, by an act, passed the 11th of February, in the year 1852, determined to lend to the railroad companies within its limits, and specified in said act, the aid of its credit, for the completion of their several lines of railway.

The plan of that legislation was that each railroad company should procure a certain amount of *bona fide* subscriptions for its capital stock, and that it should have graded, bridged, and ready for the reception of rails, a certain number of miles of its road. By means of these preliminary requirements, assurance was obtained that each railroad company would be competent to fulfill the obligations it was to incur under the statute hereinafter set forth. The period of four years was allowed for the completion of each section of a road. The act proceeds to authorize and give validity to bonds of the State, which the governor was required to issue to each company. The amounts of the bonds were to be ascertained by the length of each

railroad within the State, and the proceeds of the bonds were to be exclusively applied to the payment of the railroad iron, and equipments of the road to which they were loaned. The president of each railroad company, assisted by a commissioner appointed by the governor, was to negotiate the sale of the bonds loaned to his company. The act was made a public law for all purposes of notice, and a system of numbering was adopted for distinguishing each bond, and identifying the company to which it was issued. The tenor of the act which gave existence to the bonds, was, that each company become liable upon, and bound to perform, the obligations contained in, and represented by, the bonds loaned to it. Each company was to pay, from its own means, the interest upon the bonds loaned to it, as the same matured from time to time, and also to pay and discharge the principal debt, as it was expressed upon said bonds, when the same matured.

Your orator shows that the sale of the said bonds was to be the means of raising the money requisite for completing the superstructure, laying the rails, and providing the equipment of the roads. The bonds loaned to each company were to be payable in such places in the United States as its president might designate. In order to insure the said sale, and make a market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become the purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it, or, in case of its failure, that ample security should be provided therefor, which might be easily realized, it was provided by the statute, that "so soon as the bonds of the State shall have been issued for the first section of the road, they shall constitute a lien upon said section, without a deed from the company," and the "State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage, without a deed from the company for the payment by said company of said bonds, with the interest thereon, as the

same becomes due, and with a like mortgage or lien, without a deed from the company, upon the additional sections, and upon the entire road, including the stock, for the payment of all of the bonds issued to the company, and for the interest accruing thereon." This statutory lien was to be operative at once, and without conveyance or assurance of any kind from the corporations, and was to be superior to all other liens, upon the entire road and property of any corporation so receiving such public assistance, in the State of Tennessee. The statute was to be a substitute for a mortgage executed by each railroad company, for the purposes named in the act.

By the terms of an act of the same session provision was made for a public and official record of the issues of bonds to the several roads.

The Comptroller of the State was required to sign and number the coupons of the bonds issued to each railroad, and the Secretary of State was required to number and countersign the bonds; and upon delivering bonds to the several companies, the Secretary of State was required to take a receipt, reciting the number, date, and amount of the bonds so delivered. These receipts were to be taken in a well-bound book, to be deposited in the office of the Secretary of State.

The General Improvement law, above referred to, is herewith set out fully and at length, to wit:

AN ACT to Establish a System of Internal Improvements in this State.

SECTION I. *Be it enacted by the General Assembly of the State of Tennessee*, That whenever the East Tennessee and Virginia Railroad Company shall have procured *bona fide* subscriptions for the capital stock in said company to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and when-

ever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus, in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that section, or any part thereof, is not subject to any lien whatever, other than those created in favor of the State by the acts of 1851–2, by the written affidavit of the Chief Engineers and President of said company, together with the written affidavit of a competent engineer by him appointed, at the cost of the company, to examine said section, then said Governor shall issue *to said company* coupon bonds of the State of Tennessee, to an amount not exceeding eight thousand dollars per mile on said section, and on no other condition, *which bonds shall be payable at such place in the United States as the President of the Company may designate*, bearing an interest of six per centum per annum, payable semi-annually, and not having more than forty nor less than thirty years to mature.

SEC. 2. *Be it enacted*, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same unless upon the affidavit of said President, and a resolution of a majority of the Board of Directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails, and the Governor shall have power to appoint a commissioner to act under oath, in conjunction with said President, in negotiating said bonds for the purposes aforesaid, and to act in any other matters pertaining to said company, where the interest of the State, in the opinion of the Governor, may require it.

SEC. 3. *Be it enacted, That so soon as the* BONDS *of the State shall have been issued for the first section of the road as aforesaid,* THEY *shall constitute a lien upon said section so prepared as aforesaid,* including the road-

bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same shall be *invested* with *said* lien or mortgage without a deed from the company, *for the payment by said company of said bonds*, with the interest thereon as the same becomes due.

SEC. 4. *Be it enacted*, That when said company shall have prepared as aforesaid a second section, or any additional number of sections, of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of the facts as before provided, he shall, in like manner, issue to said company like bonds of the State of Tennessee, to an equal amount with that before issued under the first section of the act for each and every section, of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions hereinbefore provided, and upon the issuance of the said bonds, the State of Tennessee shall be *invested* with *a like mortgage or lien* without a deed from said company, upon said stock, and upon *said first and additional section or sections* of said road so prepared, upon the rails and equipments put, or to be put, upon the same, *for the payment of said bonds and the accruing interest thereon.* Provided, that if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified, shall be less than thirty miles in extent, bonds of the State shall be issued for such section, or such railroad, as may be less than thirty miles in extent for an amount in proportion to the distance, as provided in this act, but upon the same terms and conditions in all respects, as required in regard to the bonds to be issued for the other sections of said road. And when the whole of said road shall be completed the State of Tennessee shall be *invested with a lien, without a deed from the company*, upon the entire road, including the stock, right of way, grading, bridging, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments,

and all the property owned by the company as incident to or necessary for its business; and all depots, and depot stations, *for the payment of all of said bonds issued to the company* as provided in this act, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for the said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over, or come in conflict with, the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, which shall have priority over all other claims existing or to exist against said company.

SEC. 5. *Be it enacted, That it shall be the duty of said company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange or necessary commissions*, or SATISFACTORY EVIDENCE THAT SAID INTEREST HAS BEEN PAID OR PROVIDED FOR, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that effect to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee, in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits, and dividends, *and pay over the same, under the direction of the Governor, toward the liquidation of such unpaid interest.* And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the person so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of the counties through which the road shall run, commanding them to take possession of said

road, fixtures, and equipments, and everything pertaining thereto, and place the said receiver in full and complete possession of the same, and said receiver so appointed shall continue in the possession of said road, fixtures, and equipments, and run the same, and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to said proceedings, *to pay off and discharge the interest as aforesaid, due on said bonds*, which being done, the receiver shall surrender said road and fixtures and equipments to said company. The comptroller shall from time to time settle the accounts with the receiver, and the balance shall be deposited in the treasury of the State. The comptroller is authorized, and it is made his duty, upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds, *as may not be provided for by the company, as provided for in this act*, and the comptroller shall report thereof to the general assembly from time to time.

SEC. 6. *Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due*, it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company of the fact; and thereupon, said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, *to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee, against any loss on account of the issuance of said bonds*, by ordering the said railroad to be placed in the hands of a receiver; ordering the sale of said road, and all the property and assets attached thereto or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 7. *Be it enacted*, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall

use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, *and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company; and bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be directed as aforesaid*, AND CANCELED. And should said company fail to comply with the provisions of this section, it shall be proceeded against, *as provided in the 5th section of this act.*

SEC. 8. *Be it enacted*, That the President of the company shall make semi-annual reports, under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and the company, and after its completion he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings, and dividends, and what per cent. is paid on the stock to the stockholders. And said reports shall be consolidated every two years by the President of said company, and said consolidated reports shall be laid before the Governor by the first of September, every two years after the completion of the road, and the Governor shall lay said report before the Legislature for its action, at the next meeting thereof, after said report is made.

SEC. 9. *Be it enacted*, That it shall not be lawful for any officer of said company to engage in any speculation or dealing, directly or indirectly, in any real estate on or along the line, at any of the depots or depot stations, or at either terminus of said road, until after the road is completed, and every officer of the company, before entering upon the duties of his office, shall take an oath in writing, before any judge or justice of the peace in this State, that he will not knowingly violate the provisions of this act, and that he will faithfully perform the du-

ties of his office; and if any such officer of the company, or other person taking an oath as herein provided, knowingly swear falsely, he shall be deemed guilty of perjury, and subject to all the pains and penalties thereof, and every affidavit required under this act may be sworn to before any judge or justice of the peace in this State.

SEC. 10. *Be it enacted*, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown, and Charlestown Railroad Company, the Nashville and Northwestern Railroad Company, the Louisville and Nashville Railroad Company, the Southwestern Railroad, the McMinnville and Manchester Railroad Company, the Memphis and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville, and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this act.

SEC. 11. *Be it enacted*, That the gauge of all of said railroads (unless connecting with roads in other States of a different gauge) shall be the same as that of the Nashville and Chattanooga Railroad, and not otherwise, and the iron rails to be put upon said road shall not be less than eighty tons to the mile, if the U rail is used, and not less than one hundred tons to the mile if the T rail is used.

SEC. 12. *Be it enacted, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss* IN CONSEQUENCE OF THE ISSUANCE OF BONDS UNDER THE PROVISIONS OF THIS ACT. BUT IN SUCH MANNER AS NOT TO IMPAIR THE VESTED RIGHTS OF THE STOCKHOLDERS OF THE COMPANIES.

SEC. 13. *Be it enacted*, That it shall be the duty of the Governor, from time to time, when there shall

be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of bonds of this State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute, in the name of the State, a suit in the Circuit or Chancery Court of the county of the place of business of the company, setting forth the facts; and when the fact shall satisfactorily appear to the Court, that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning, and provisions of this act, then, and in such case, the Court shall order, adjudge, and decree, that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the treasury, *and it shall be the duty of the comptroller immediately to vest the same in stocks, creating a sinking fund, as provided for in the 7th section of this act;* and said company shall forfeit all rights and privileges under the provisions of this act, and the stockholders thereof shall be individually liable *for the payment of the bonds so fraudulently obtained* by such company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by such company, excepting such stockholders as may show to the said Court that they were ignorant of or opposed to the perpetration of such frauds by the company.

SEC. 14. *Be it enacted*, That in the event any of the roads, fixtures, or property belonging to any of said roads shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property, in the name of the State; and in case said agent shall purchase said road for the State, *the Governor shall appoint a receiver, who shall take possession of said road and property, and use the same as provided for in the 5th section of this act*, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

SEC. 15. *Be it enacted, That this act shall be deemed and taken to be a public act as to all purposes of notice: Provided,* That should any of the companies hereinbefore enumerated have, *bona fide*, and before the passage of this act, purchased or otherwise contracted for, upon their own credit, the necessary iron, rails, spikes, equipments, for the road or roads, or any section or sections thereof, the bonds of the State shall be issued to such company or companies, as hereinbefore prescribed.

SEC. 16. *Be it enacted,* That the railroad companies specified in this act, and all other railroad companies hereafter incorporated in this State, shall have power to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other, or with the branches thereof; and it shall be the duty of said companies, when required, to receive on their roads and branches, the full loaded freight cars from each other and the branches thereof, and transport the same to their destination, and return them, without charging for the transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars. *Provided*, that said companies shall not be compelled to receive such cars on their roads, unless they are constructed with the same gauge, and are of equal strength with their own cars, of which the principal engineer of the road of which it is proposed to require said cars to be transported shall be the judge. *Provided*, that the bonds of the State, proposed to be issued to the Memphis and Charleston Railroad Company under the provisions of this act, shall, in event of their issuance to said company, be divided between the main trunk line, proposed to be constructed by said company, and the branch thereof, from the town of Moscow to the town of Sommerville, in the county of Fayette, according to the respective lengths of said main trunk line and said branch; and the lien of the State, as herein secured, shall continue upon said main line, and also upon said branch, until said bonds and interest are paid, as heretofore provided.

SEC. 17. *Be it enacted,* That in all cases where bonds may be issued to any of said companies, as provided

in this act, the State of Tennessee shall be entitled to two directors in each company, to be appointed by the Governor of the State, to which bonds may be issued.

SEC. 18. *Be it enacted*, That when the Nashville and Chattanooga Railroad Company shall have completed twenty-five miles of their road, in addition to the eighty miles specified in the second section of the act, passed the 4th of February, 1848, chapter 169, then the Governor of the State shall indorse and guarantee, in the name and on behalf of the State of Tennessee, the bonds of said company to the amount of one hundred and seventy-five thousand dollars, and in like manner, when another section of twenty-five miles of said road shall have been completed, the Governor of the State, in the name and on behalf of the State, shall indorse and guarantee the bonds of said company to the additional amount of one hundred and seventy-five thousand dollars, and said bonds are to be indorsed and guaranteed in the same manner, and the same indemnity is to be furnished by said company for the protection of the State, and the like lien is to be given, and the same character of bonds are to be indorsed and guaranteed, as provided in the said act of the 4th of February, 1848.

SEC. 19. *Be it enacted*, That the aid contemplated by the first section of this act, shall only be extended to one of the roads chartered under the names of the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company. *Provided*, That the first of said roads which shall secure the subscription of the capital stock, for the construction of the same, shall be entitled to such aid. *Provided further*, If the Nashville and Southern Railroad Company first obtained the stock in their railroad, as provided in the first section of this act, and shall construct their road to the Tennessee river, to the Mississippi State line, or to a point between the Tennessee river and the Mississippi State line, then the Tennessee and Alabama Railroad Company may construct their road from the Alabama State line to intersect with the Nashville and Southern Railroad, at such point as said company may select, and the provisions of this act shall extend to the Tennessee

and Alabama Railroad, from said Alabama State line to said point of intersection. But if the Tennessee and Alabama Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and construct their road to the Alabama line, in the direction of Florence, then the Nashville and Southern Railroad Company may construct their railroad from the Tennessee river, the Mississippi State line, or any point between the Tennessee river and the Mississippi State line, so as to intersect the Tennessee and Alabama Railroad, at such point as the company may select, and the provisions of this act shall extend to said railroad from said point of intersection to the Tennessee river, the Mississippi State line, or to any point between the Tennessee river, and the Mississippi State line. And the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company, shall have power to unite or consolidate their stock if they deem it advisable, and upon such terms as the companies may agree upon. *Provided also*, that if the Memphis and Nashville Railroad Company shall not comply with the requirements of this act, and complete thirty miles of their road within four years; or if the Nashville and Northwestern Railroad Company shall, in like manner, fail to complete thirty miles of their road within four years, then the Tennessee Central Railroad Company shall have all the rights, powers, privileges, and benefits intended to be given by this act, to those companies respectively, under the same restrictions and limitations; but the said Tennessee Central Railroad Company shall be allowed two years longer time, in which to prepare thirty miles of their road-bed for the reception of the iron rails, and may then receive the aid of the State, in the issuance of bonds for their benefit, as prescribed in this act. *Provided*, That this provision shall not preclude any subsequent legislature from extending the time of four years, in which to complete any section of thirty miles of said Nashville and Memphis, or Nashville and Northwestern Railroad. *That each of said companies is hereby authorized and required to appoint an agent or agents to whom the bonds shall be delivered, and whose duty it shall be to control said bonds, and see that*

they are exclusively applied to the payment of the railroad iron and equipments, as provided for in this act, and for no other purpose whatever. And the said agent, before he receives the bonds of the State, shall give bond and security, to be approved by the Governor and payable to the State of Tennessee, for the application of the bonds, or the proceeds thereof, to the purposes aforesaid. *Provided*, That before any bonds, under the provisions of this act, shall be issued to any agent of any railroad contemplated by this act, the president of any such company shall first deposit in the office of the Secretary of State, a full, true, and accurate list of all the stockholders, with the sums subscribed by each and every stockholder.

SEC. 20. *Be it enacted*, That no road embraced in this act shall be entitled to State aid unless it shall, *within four years*, complete at least one section of thirty miles, or the whole length of the road, if less than thirty miles long.

Those portions of the act of 1852, passed on February 21st, providing for identification of the bonds, by means of public records, are as follows:

SEC. 7. *Be it further enacted*, That the different Internal Improvement Companies, to whom the bonds of the State may be loaned under the different acts of the present Legislature, shall pay the expenses of engraving and preparing the same.

SEC. 8. *Be it enacted*, That the Governor of the State shall cause to be engraved and printed, the bonds which may be issued under the acts of the present General Assembly, as a loan made to Internal Improvement Companies, and the said bonds shall bear date on the first day of January prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. *Be it enacted, That the coupons shall be signed and numbered by the comptroller, and the bonds shall be countersigned, sealed, and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date, and*

amount of said bonds, in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party receiving the said bond.

Your orator shows that the State of Tennessee, by act of its General Assembly, passed on the 8th of February, 1854, increased the amount of bonds to be issued to the several "internal improvement companies from $8,000 to $10,000 per mile," and provision was made for an issue of similar bonds to be used for bridge purposes. The said act was amendatory of the act passed 11th of February, 1852, "to establish a system of internal improvement in this State," and required that the increased amount of bonds should be received, "upon the terms and conditions mentioned in the act, which this was intended to amend." By the act of February 17, 1854, the length of the sections which it was necessary for the railroads to complete before obtaining bonds of the State, was decreased from twenty to ten miles, after the completion of the first section of thirty miles. By the act of January 19, 1855, the foregoing act was amended so that the grading only of ten-mile sections was required, in lieu of the completion of said sections. The act of October 29, 1855, was amendatory of the bridge law, above mentioned.

Your orator attaches hereto copies of said acts above referred to, marked Exhibit B, and makes them a part of his bill of complaint.

Your orator shows that there was delivered on account of the Nasbville and Chattanooga Railroad and to the company of that name, internal improvement bonds of the State of Tennessee, being of the numbers, dates, and in the amounts hereinafter set forth:

10,692 to 10,773, White, B, 82	$82,000
11,195 to 11,225, White, B, 31	31,000
882 to 908, White, C, 27	27,000
1,572 to 1,581, White, C, 10	10,000
5,461 to 5,585, Green, no letter, 125	125,000
8,041 to 8,160, Green, no letter, 120	120,000
	$395,000

A copy of one of the said bonds and coupons is hereto attached, marked Exhibit C.

Your orator shows that the said bonds, to the amount of $395,000, were received by or on behalf of the Nashville and Chattanooga Railroad Company through the officers appointed in the act of February 11, 1852, and were, by the said company, negotiated and sold, in pursuance of law, to *bona fide* holders. The proceeds of these bonds were to be applied to enable the company to which they were loaned, to earn the interest and principal moneys of the said obligations. About one hundred and fifty seven (157) of the said bonds are now outstanding in the hands of *bona fide* holders. Your orator is the owner and holder of five of said bonds, being of the numbers, dates, and descriptions (lettered B and colored white) in all respects of the bonds heretofore described and issued to the Nashville and Chattanooga Railroad Company by the State of Tennessee.

Your orator is likewise the holder of seven coupons, attached to each one of said bonds, the same representing the installments of interest for three and one-half consecutive years, beginning with the installment that fell due on the 1st of January, 1876, and including the installment of the first day of January, 1879, and amounting in the aggregate to twenty-one per cent. of the par or principal amount of each one of the aforesaid bonds. Your orator shows that the holders of said bonds are very numerous, and reside in foreign countries, as well as in different parts of the United States. Their names are in great part unknown to your orator, and they are therefore not made parties hereto.

And further complaining, your orator shows that the Nashville and Chattanooga Railroad Company has failed to comply with the provisions of the general internal improvement law above recited, for the payment of the said installments of interest on your orator's bonds, and on the bonds of other holders in like situation, and the coupons of the bonds aforesaid are now in default and unpaid.

Your orator charges like defaults upon the coupons that have fallen due and have become payable by the Nash-

ville and Chattanooga Railroad Company, according to the terms of the statute, on the first day of January, 1876; on the first day of July, 1876; on the first day of January, 1877; on the first day of July, 1877; on the first day of January, 1878; on the first day of July, 1878, and on the first day of January, 1879. The State of Tennessee is likewise in default on said coupons.

Your orator is entitled to the enforcement of the lien aforesaid, for the payment of interest on his bonds, and those of other holders, and for the appointment of receivers, under the powers of this Court of equity, for the purposes described in the statute.

Your orator further shows that it is provided by the statute that upon default in the payment of interest by any of the Internal Improvement Companies, upon the bonds loaned it, the right to impound the rents, issues, profits, and dividends shall accrue, for the purpose of paying over the same toward the liquidation of the unpaid interest. For the execution of that purpose, it provides that some suitable person or persons shall be appointed as receivers to take possession and control of said railroad, and all the assets thereof. Said receiver is to continue in possession and manage the entire road until a sufficient sum shall be realized, exclusive of the costs and expenses incident to such proceedings, to pay off and discharge the interest due on the bonds.

And now your orator shows that the said railroad company pretends and claims that the aforesaid lien on its property is satisfied and discharged, without payment of the interest or principal of your orator's bonds, and that it is also absolved from the obligation which it assumed by the acceptance and use of your orator's bonds to pay the interest thereon.

It claims that the discharge of said incumbrance has been effected by and through the means of certain legislation, enacted in the years 1869 and 1870, many years after the sale of the said bonds, and while the same were outstanding, in the hands of *bona fide* purchasers thereof.

The said company pretends that by the act of February 21, 1856, increasing the sinking fund to two per cent. per annum, to commence from the date of the issuance of internal improvement bonds, and providing for reinvestment of the accruing interest in the sinking fund, it was intended that deliveries of bonds into the sinking fund should constitute a discharge of the statutory lien on the road, without payment of interest or principal of the bonds loaned to the company. It claims a similar effect to be deduced from the act passed on 20th March, 1860. Copies of the said acts are herewith attached, marked Exhibit D.

The said company likewise pretends that, by means of the acts of February 25, 1869, and of January 2, 1870, it was enabled to extinguish the obligation to pay the interest and principal of the internal improvement bonds issued to it, by means of the delivery to the State of any obligations of the State, though the said obligations were not secured by a statutory lien upon the Nashville and Chattanooga Railroad, or issued in aid thereof. The defendant claims to have complied with the provisions of said acts, and to have thereby discharged the said incumbrance, without payment of the bonds for which it was responsible.

Your orator shows that the said pretense is fraudulent, and he charges the facts to be as follows:

During the late civil war the railroad companies did not pay the interest on the bonds issued to them, and after the war they still continued in great part in default in making the payments of interest on the said bonds. The State of Tennessee had likewise been in default during the same time. The market value of the bonds had meanwhile fallen very greatly, and the securities were very much depreciated, to fifty per cent. or less of their par value.

Under these circumstances, the officials of the railroad companies conceived the project of avoiding the liabilities of these corporations for the payment of the bonds loaned to them. Their project was to treat the lien on the railroads as the absolute property of the State, without regard to the trust in favor of the holders of the bonds whose

moneys the companies had received. They purposed to induce the legislature to proceed upon this basis, and to assign the lien on each road, in consideration of the receipt by the State of an amount of its bonds from each company, without regard to whether they were the bonds loaned to and the obligations of the company delivering them, and were entitled to the lien on its road. They applied themselves to the procurement of such acts of the General Assembly of Tennessee as they deemed would assist them in the accomplishment of their projects.

Your orator shows that the General Assembly did pass an act on February 25, 1869, a copy of which is hereto attached, marked Exhibit E. Your orator shows that the said act, as passed, differed in material respects from the bill drafted by the agents of the corporations. It had been amended in the course of its passage through the assembly, so as to preserve the rights of the Internal Improvement bondholders to their liens on the several railroads.

Your orator shows that the railroad companies, not being content with the said act, and not deeming that they had thereby acquired even the appearance of legislative support for the project on which they desired to enter, procured, at the next session of the legislature, the introduction of a bill, which, as amended, became the act of January 2, 1870, a copy of which is hereto attached, marked Exhibit F.

Your orator further shows that the said last mentioned act, as passed, differed in material respects from the bill which the officials of the railroad corporations had procured to be introduced, as appears by the insertion of the provisions hereinafter referred to.

Your orator shows that about said time the officers of some of the railroad corporations obtained the opinion of counsel that they might safely embark on the venture above described, and disregard the rights and liens of the holders of the internal improvement bonds. Your orator prays leave to bring proof of said opinions on the trial, and particu-

larly of the opinion of Edward H. East and others. Your orator shows that at the time the officials of some of the railroad companies offered the new or so-called substitution bonds for sale (which bonds they claimed had acquired the lien of your orator's bonds), they published an opinion of New York counsel seeking to show that the State had the right to treat the liens of the internal improvement bonds in the manner above described. The said transaction in all its entirety was fully understood by the railroad company, and by the purchasers of the new bonds, as appeared from the face of their bonds, the deed purporting to secure them, and the legal opinions above mentioned. They knew that they were engaged in an attempt to grasp the security and property conferred by the distinct language of the statute upon the holders of the internal improvement bonds, for the payment of the interest and principal of their bonds.

Your orator further avers and shows that the said pretenses and claims are illegal and invalid and fraudulent. The defendants never had, nor have they, any right to affect or impair the contract and lien which was created and entered into by and between the holders of the internal improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as trustee of the said lien or mortgage, and the railroad company as the debtor under the said contract and lien.

Your orator charges that none of the aforesaid acts of the General Assembly purport to authorize the discharge of the lien of the internal improvement bonds, issued to the railroad company, in any other mode than by the delivery of the identical bonds constituting liens upon the said railroad. The act of February 25, 1869, provides that the interest of the present bondholders of the State shall not be affected, and that railroad companies which have issued second-mortgage bonds, availing themselves of the provisions of that act, shall file with the comptroller, bonds of the same series as those loaned to such company, for which the State holds a first-mortgage lien. The act of January 2, 1870, requires that its provisions shall not be so construed as to allow the pay-

ment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund.

Your orator charges that, under and by virtue of the provisions of the general internal improvement law of February 11, 1852, the State of Tennessee was only secondarily liable for the bonds loaned by it to the Nashville and Chattanooga Railroad Company, and that the said company was primarily liable under the provisions of said act, for the payment of the principal and interest of said bonds. And your orator charges that the said acts were not applicable by their terms to the lien secured to the bonds issued in aid of the Nashville and Chattanooga Railroad Company.

Your orator further charges that by the terms of the general improvement law of February 11, 1852, the State of Tennessee constituted herself the trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act. The terms of that trust were defined and set forth in the sections of the statute.

By the acceptance of the bonds, and the use of their proceeds by the Nashville and Chattanooga Railroad Company, a mortgage lien attached to the property of the company, without a deed from the company, and the conditions of that mortgage were as prescribed in the statute. By the purchase of the said bonds, the holders thereof became entitled, by contract, to the lien rights set forth in the internal improvement law. That lien was distinctly specified to be for the payment of the principal and interest of the bonds loaned to the company, as the same accrued and became due.

Your orator charges that the aforesaid acts, of date subsequent to the issuance of said bonds, in so far as they attempt, or may be construed to have authorized the satisfaction of the statutory lien established for the benefit of the holders of the internal improvement bonds of Tennessee loaned to the said company, by any other means than payment, impaired or sought to impair the obligation of the con-

tract aforesaid, and were in violation of the Federal Constitution, and void, and all acts committed thereunder are illegal and null.

Your orator likewise shows that, by virtue of his right in equity as a lienholder and the terms of the statutory mortgage above described, he is entitled to have the possession of the Nashville and Chattanoogo Railroad, in the State of Tennessee, secured by a receivership, for the benefit of the holders of the internal improvement bonds aforesaid, loaned to the Nashville and Chattanooga Railroad Company, and for the payment of the interest thereon, for which the said company became bound. The receiver or receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orator shows that the officials of the State of Tennessee, named in the internal improvement law for the execution of the trusts pertaining to the statutory receivership, to wit, the comptroller and the governor, claim to be bound by the subsequent acts of the General Assembly of Tennessee, passed in the years 1869 and 1870, and your orator is unable to obtain the action of the said officials, or of the State of Tennessee, as trustee for the execution of the trusts aforesaid. Your orator shows that he is remediless at law and without the intervention of a court of equity.

Wherefore, your orator prays that the priority of the said lien of the internal improvement bonds and coupons aforesaid, upon all the railroad equipment, incomes, tolls, rights, privileges, property, and franchises of said Nashville and Railroad Company, within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights. That the income of said property, arising from its use in said State, may be applied to the payment of interest accrued and to accrue upon the bonds hereinbefore described, and as may appear by proofs before a master to be still outstanding and unpaid. That the said property may be seized by order of this Court and placed in the hands of receivers,

to be administered according to the liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied.

And, may it please your Honors, to grant unto your orator such further or other and different relief in the premises, as the nature of the case may require, and be consistent with equity and good conscience.

May it please your Honors, to grant unto your orator writs of subpena of the United States of America, to be directed to the said Nashville and Chattanooga Railroad Company, and the Nashville, Chattanooga and St. Louis Railroad Company, and against all other persons interested in this matter and amenable to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honors, in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such orders and decrees therein as to your Honors shall seem meet.

E. L. ANDREWS and GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

APPENDIX.

Exhibit B.

ACT OF FEBRUARY 8, 1854.

AN ACT to amend an act passed 11th February, 1852, entitled "An Act to establish a system of Internal Improvement in this State."

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the bonds of the State shall issue to the companies mentioned in the first and tenth, and nineteenth sections of the act which this is intended to amend, and also to the "Edgefield and Kentucky Railroad Company," "Central Southern Railroad Company," "Knoxville and Charleston Railroad Company," Mississippi Central and Tennessee Railroad Company," "Knoxville and Kentucky Railroad Company," "Tennessee Western and Charleston Railroad Company," and "Cincinnati, Cumberland Gap and Charleston Railroad Company," *upon the terms and conditious mentioned in the act which this is intended to amend*, but to the extent of ten thousand dollars (instead of eight thousand) per mile. *Provided*, that the aid of the State shall be extended to the South Carolina, Tennessee and Kentucky Railroad Company, in lieu of the Knoxville and Charleston Railroad Company, to the extent of fifty-five miles, and no more, in the event the Blue Ridge Railroad Company of South Carolina shall adopt the charter of said South Carolina, Tennessee and Kentucky Railroad Company, and obligate themselves in such manner as shall be satisfactory to the Governor, not to stop the construction of the said road at a junction with the East Tennessee and Georgia Railroad, but to build said road to South West Point; and said South Carolina, Tennessee and Kentucky Railroad Company, before it shall receive the aid herein provided, shall bring itself within the general provisions in all respects, of the act which this is intended to amend. But should the Blue Ridge Railroad Company not adopt such charter, and enter into the obligations aforesaid, then the provisions of this act and that which it is intended to amend, shall apply in all things to the Knoxville and Charleston Railroad Company.

SEC. 2. *Be it further enacted*, That bonds of the State shall issue to the companies mentioned in the first section of this act, and the tenth and nineteenth sections of that which this is intended to amend, for each bridge that said companies, or either of them, may have to build in East, Middle, and West Tennessee, across the Holston, Clinch, Big Hatchie, Tennessee, and Cumberland rivers, for the maximum sum that bonds are provided to be issued to said East Tennessee and Georgia Railroad Company, by an Act passed February 4, 1852, entitled, "An Act to aid in the completion of the East Tennessee and Georgia

Railroad," and upon the terms and conditions mentioned in said Act (except the 2nd section), and also in the fifth and sixth sections of an Act, passed February 26, 1852, entitled "An Act to charter the Chattanooga, Blue Spring, and Cleveland Railroad Company, and for other purposes," and said bonds to be issued under this section shall be included in the aggregate amount of stock raised by said companies in the same manner that the three hundred thousand dollars of bonds loaned to the East Tennessee and Virginia Railroad Company, under an Act, passed January 15, 1852, to enable said company to build bridges, are provided to be included in the aggregate amount of stock to be raised by the East Tennessee and Virginia Railroad Company.

SEC. 3. *Be it further enacted*, That the office of "Commissioner of Roads" be filled by the appointment of the Governor; that the incumbent shall hold his office for two years, and shall receive an annual salary of two thousand dollars. It shall be his duty to examine into the condition of railroad companies applying for the bonds of the State, and to report on oath to the Governor, the condition of said roads and the companies owning them; inquiring into and reporting all the facts necessary to be reported upon under this Act, and that which this is intended to amend. He shall further superintend and supervise the interest of the State in all the railroads and turnpike roads of this State, and whenever he may deem it necessary, report to the Governor any facts he may believe to be of importance to said interest. The said commissioner, in making his investigations, shall have the power to administer oaths, and send for persons and papers; and may, if in the opinion of the Governor it should be necessary and proper, apply to the Courts for aid to protect said interests; and it shall not be lawful for the Governor to issue such bonds to any railroad company until he shall be satisfied they have complied with the law.

SEC. 4. *Be it enacted*, That if any officer, agent, or servant of any railroad company receiving the bonds of the State, shall appropriate said bonds or the money arising from the sale thereof, or any portion of either, to any other use than that prescribed in the Act under which said bonds shall be issued, such person or persons so offending shall be deemed guilty of a felony, and, upon conviction, shall undergo confinement in the penitentiary for a period of not less than five nor more than fifteen years.

SEC. 5. *Be it enacted*, That no road embraced in this Act shall be entitled to its provisions, unless it shall, within four years, grade one section of thirty miles.

SEC. 6. *Be it enacted*, That the Governor shall indorse and guarantee the bonds of the Nashville and Chattanooga Railroad Company to an amount not exceeding six hundred and fifty thousand dollars, and the State shall thereupon, by virtue of this Act, be invested with a lien

upon the entire road of said company, with all its equipments, fixtures, etc., and shall have the same remedies for enforcing said lien as are given by previous Acts of the General Assembly directing an indorsement of the bonds of said company. The provisions of this Act shall extend to all railroad companies mentioned in the aforesaid Act, passed February 11, 1852, whose charters, routes, or names have been, or may hereafter be, changed; and if any two or more of said companies shall be consolidated, they, or the consolidated company, shall still be entitled to the provisions of this Act.

SEC. 7. *Be it further enacted*, That the Mississippi Central and Tennessee Railroad Company shall be entitled to the provisions of this Act from Jackson, Tennessee, to the Tennessee river, for any extension of said road which said company may make from Jackson by way of Huntingdon in the direction of Nashville. And, *provided further*, that nothing in this Act shall be so construed as to extend the time for the completion of the first section of the roads mentioned in the said Act of 11th February, 1852.

SEC. 8. *Be it enacted*, That the bonds to be issued under the provisions of this Act shall, *in no case be sold at less than par.*

SEC. 9. *Be it further enacted*, That the first section of an Act, passed February 11, 1852, entitled "An Act to establish a system of internal improvements in this State," be so amended that whenever the East Tennessee and Virginia Railroad Company shall have graded and shall have ready to put down the necessary timbers for the reception of rails, as is contemplated in said section, from Knoxville to the Holston river at Magbie's ferry, or to the Holston river at Middletown, at each end, it shall be the duty of the Governor to issue bonds of the State to the company, as is required in said section, and when said company shall have complied with the above requisitions, it shall be considered as fulfilling the requirements in full of the first section of the Act above referred to.

SEC. 10. *Be it enacted*, That the provisions of this Act shall extend to and embrace the Mississippi and Tennessee Railroad Company, chartered 5th December, 1853, and the State aid given to other roads by this Act shall be given in like manner to the said Mississippi and Tennessee Railroad, so far as the same lies in the State of Tennessee.

SEC. 11. *Be it enacted*, That the farther time of two years is hereby extended to the Southwestern Railroad Company to bring themselves within the provisions of the Act entitled "An act to establish a system of internal improvements in this State."

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF FEBRUARY 17, 1854.

AN ACT to amend the charter of the Memphis and Somerville Turnpike Company, and for other purposes.

. . . . . .

SEC. 5. *Be it enacted*, That the fourth section of an Act to establish a system of internal improvements in this State be amended by striking out the word *twenty* wherever it occurs in said section, and inserting the word *ten*, so as to allow all the railroad companies entitled to the benefits of said act, and an Act, passed February 8, 1854, as an amendment thereto, to obtain the bonds of the State upon sections of *ten* miles instead of *twenty* miles, after the first section of thirty miles has been completed.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF JANUARY 19, 1855.

AN ACT to amend the Internal Improvement Acts of 1852 and 1854.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That hereafter it shall not be necessary for the Engineer-in-Chief to swear to the subscription list, solvency, and condition of any railroad company applying for State aid, but the oath required of the Engineer shall be taken by the President and Treasurer of the company, whose duty it is to know of the condition, solvency, and financial affairs of said company.

SEC. 2. *Be it further enacted*, That it shall be lawful and proper for the East Tennessee and Virginia Railroad Company to lay down iron at either end of said road, and to draw the bonds of the State according to the General Internal Improvement Act, passed February 11, 1851–2, and the Act of February, 8, 1853–4.

SEC. 3. *Be it enacted*, That the fifth section of the Act of February 17, 1854, be so amended that hereafter the bonds of the State may issue for ten miles or more of road graded, as required by existing laws, after the completion of the first thirty miles.

SEC. 4. *Be it further enacted*, That so much of the General Internal Improvement Acts of 1851–2, and 1853 and 1854, as requires the several railroad companies embraced within the provisions of the aforesaid Acts to have the bridges, abutments, and embankments on the several sections of their respective roads completed before the bonds of the State shall issue to the companies of said roads, be so amended as to accept those bridges, abutments, and embankments which have been provided with State aid.

SEC. 5. *Be it enacted*, That this Act shall take effect from and after its passage.

NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Exhibit C.

$1,000. $1,000.

No. UNITED STATES OF AMERICA. No.

Know all men by these presents: That the State of Tennessee acknowledges to owe to , or order, One Thousand Dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the day of , 18 , with interest thereon, at the rate of six per cent. per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payments of said sums of money, and the interest thereon, at the times and places, and in the manner aforesaid, the faith of the said State of Tennessee is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the General Assembly of said State, passed February 11th, 1852, to establish a system of Internal Improvements in said State.

In testimony whereof, and in pursuance of the acts aforesaid, I, , Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the great seal of the State affixed.

[ ] Done at the Executive Department in the city of Nashville, this day of , 18 .

To which was attached the following form of coupon:

30. THE TREASURER OF THE STATE OF TENNESSEE. 30.

Will pay the bearer THIRTY DOLLARS, in the city of New York, on the first day of January, 1877, being the semi-annual interest then falling due on bond No.

J. C. SUTTRELL, 30,
Comptroller.

Exhibit D.

ACT OF FEBRUARY 21, 1856.

AN ACT to aid in constructing a railroad from Chattanooga to the East Tennessee and Georgia Railroad, in the direction of Knoxville, and for the benefit of the East Tennessee and Virginia Railroad, and for other purposes.

. . . . . .

SEC. 5. *Be it further enacted*, That it shall be the duty of the several railroad companies in this State, who have received, or may hereafter receive, bonds of the State, or the indorsement of their bonds by the State to aid in the construction of their several roads, under the provisions of the act of 1851, 1852, and the acts amendatory thereto, at the expiration of five years from the issuance or indorsement of their several bonds, annually to set apart and pay over to the Treasurer of the State two per cent. per annum upon all bonds which have been or may hereafter be issued or indorsed as aforesaid as a sinking fund for the ultimate redemption of the bonds issued or indorsed as aforesaid; which sinking fund, when paid over, the Governor, Comptroller of the Treasury, and President of the Bank of Tennessee shall invest in the bonds of the State, and reinvest all accruing interest in like securities; and they are hereby constituted a board of commissioners for the management, government, and control of said sinking fund.

SEC. 6. *Be it further enacted*, That should any of said railroad companies fail, or refuse to comply with the provisions of the fifth section of this act, it shall be the duty of the Governor forthwith to notify the Attorney-General of the district in which is situated the place of business of said company failing or refusing as aforesaid, of the fact; and thereupon the Attorney-General shall immediately proceed against said company to collect said sinking fund, in the manner prescribed in the sixth section of the act entitled "An Act to establish a system of internal improvements in this State," passed February 11, 1852.

NEIL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHEM,
Speaker of the Senate.

ACT OF MARCH 20, 1860.

AN ACT to provide for the equalization and investment of the sinking fund, on the bonds issued to or indorsed for railroads in this State.

SECTION 1. *Be it enacted by the General Assembly of Tennessee*, That the money or bonds, that have heretofore or may be paid by the cities or railroad companies in this State to the Sinking Fund Commission-

ers by the 1st of January, 1860, together with the accruing interest thereon to that date, shall be passed directly to the credit of the party having so paid the same, and be a release to said party for that amount on the debt due by them to the State of Tennessee.

SEC. 2. Said bonds shall all be canceled by said commissioners, and if indorsed bonds of any railroad company shall be canceled as hereinafter provided for the cancellation of State bonds, and shall be delivered over to said company or corporation, taking the president's of said company or the officers' of said company receipt for the same, which receipt shall be filed and a copy of the same placed upon a book, which the said commissioners shall keep for that purpose. If State bonds, they shall be canceled and filed in the office of the Secretary of State as hereinafter provided.

SEC. 3. That after the first day of January, 1860, all railroad companies or city corporations who have or may hereafter receive the bonds of the State, or its indorsement of their own bonds under the general internal improvement law of this State, or any other law, shall be required to pay two and one-half per cent. per annum as a sinking fund on the amount of the bonds so issued or indorsed by the State for said company or corporation, to be paid in equal installments on the first days of April and October, five years after the date of said bonds, and annually thereafter.

SEC. 4. All bonds issued during any one year shall be dated on the first day of January of that year.

SEC. 5. Said companies or corporations may pay said sinking fund in cash or in the like character of bonds that may have been issued or indorsed by the State for said company at their face or par value.

SEC. 6. If paid in money, the commissioners shall invest it immediately in the bonds of the State, and shall have the same canceled and filed as heretofore provided. Such bonds are to be of the same character as those issued to such company or corporation.

SEC. 7. The sinking fund, when paid, in all cases shall be passed directly to the credit of said company or corporation, and be a release to said company or corporation from that amount due by them to the State. The commissioners shall issue a receipt to each company or corporation for such payment, retaining a duplicate in a well-bound book kept for that purpose.

SEC. 8. Each and every railroad company or city corporation shall provide the interest semi-annually, as now provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued to or indorsed by the State for said company as heretofore provided.

SEC. 9. The Comptroller of the State shall keep a regular account against each company or corporation, charging them with the amount of bonds originally issued to or indorsed for said company or corpora-

tion by the State, and crediting them by the amount of the sinking fund paid, and shall furnish the Treasurer of State a statement of the amount due by each company or corporation on the first day of June and December of each year, that he may know how much interest each company or corporation has to pay.

SEC. 10. The commissioners of the sinking fund shall cancel all bonds of the State as soon as paid in or purchased, by cutting out the Governor's and Secretary of State's names, and so defacing each coupon that it can not by possibility be used or circulated, and shall file the same in the Secretary of State's office.

SEC. 11. This law shall be in full force from and after its passage, and shall repeal all laws in conflict with it, but shall not be so construed as otherwise to affect any law on the subject of the sinking fund or the payment of interest due on State or indorsed bonds.

W. C. WHITTHORNE,
Speaker of the House of Representatives.
TAZ. W. NEWMAN,
Speaker of the Senate.

Exhibit E.

ACT OF FEBRUARY 25, 1869.

AN ACT to Liquidate the State Debt, contracted in aid of Railroad Companies in the State of Tennessee.

WHEREAS, under the General Internal Improvement Laws of the State, passed from time to time, aid has been granted to various railroad companies by the loaning of six per cent. bonds of the State, to enable said companies to iron, equip, build, and bridge, and for other purposes, which is now secured to the State by a first mortgage or lien on the franchise, property, and fixtures of respective railroad companies; and,

WHEREAS, it is desirable for the general welfare of the State, that the State shall be reimbursed such amounts as have been advanced to the different railroad companies, as fast as may be practicable; therefore,

SECTION 1. *Be it enacted by the general assembly of the State of Tennessee,* That the respective railroad companies, or either of them that have created indebtedness to the State, are hereby authorized to repay any amount of the principal of such indebtedness as they have respectively created in the bonds of the State, in such amount, and at such times, as may be practicable:

Provided, however, that nothing in this Act shall be so construed as to release said railroad companies from any lien which the State may have on the same for any unpaid interest now due on said bonds of the State authorized to be surrendered by this Act.

SEC. 2. *Be it further enacted*, That any railroad company or companies repaying any indebtedness due the State under the provisions of this act, are authorized to issue bonds of equal amount and denomination with the bonds of the State paid and delivered up for cancellation, as hereinafter provided, which said railroad bonds, so issued in lieu of any amount of State bonds, shall be certified to by the comptroller, entered in a book to be kept for that purpose, with date, number, and amount, and shall be a lien, pro rata in amount and of equal validity and effect with the unretired part of the State indebtedness upon such railroad, and all its property, franchises, fixtures, and material.

SEC. 3. *Be it further enacted*, That in order to facilitate the railroad companies that may wish to avail themselves of the provisions of this act in paying the indebtedness due to the State, respectively, they, or any of them, are hereby authorized to consolidate their property, in whole or in part, with other railroad companies, and issue bonds and stock as provided for in the second section of this act, and may adopt the corporate franchise of either of the roads as the stockholders may elect, and each railroad company paying its indebtedness, and such railroad companies as may consolidate under the provisions of this act, are hereby authorized to determine, by a vote of the stockholders of said company or consolidated companies, the number of directors of such company, and elect the same under the new organization, and that the said directors, so elected, shall, according to the by-laws and rules of said corporation, elect one of their number president of said company.

SEC. 4. *Be it further enacted*, That the comptroller of the State shall receive from the railroad companies, or any of them, bonds of the State in such amounts as may be presented, and cancel the same in the presence of the officer or agent of the railroad company paying them in, and execute to the said railroad company or companies duplicate receipts for the amount and number of said bonds so paid in, and it shall further be the duty of the comptroller to certify on the bonds of any railroad company or companies repaying indebtedness due to the State, that the same has been paid, and that the so certified (bonds) are secured by first mortgage.

Provided, That said railroad companies shall liquidate their indebtedness prior to the maturity of the bonds that have caused said indebtedness; and be it further provided, that said bonds, when executed by the respective railroad companies or either of them, shall be deposited with the Comptroller of the State, whose duty it shall be to deliver said bonds, or any number of them, to the president and directors of the company, on the deposit by said president and directors or authorized agent of an equal amount of the six per cent. bonds of the State of Tennessee, with unpaid coupons attached, and the

company's first mortgage bonds, authorized to be issued by this act, shall have no validity or value except the comptroller's certificate is affixed on the face of each bond, that said bond is executed, and issued and by virtue of law taken the place of a bond of the State and is the first mortgage bond.

SEC. 5. *Be it further enacted*, That the comptroller shall be entitled to a fee of one dollar on each thousand dollars of the bonds certified as aforesaid, to be paid by the railroad company for which the same is done; and it shall be lawful for the comptroller to discharge the duties imposed by this act, by and through an agent in the city of New York; and all the provisions of this act shall attach to and become a part of the charter of any railroad company or companies acting under it.

SEC. 6. *Be it further enacted*, That by and with the consent of the board of directors of any railroad company in this State under the General Improvement Law, passed the 11th of February, 1852, and all the amendments thereto, that any person or corporation may, by paying the indebtedness of such railroad company to the State in the bonds of the State, as provided for by law, be, and they are hereby substituted and entitled to all the liens against said company for the payment of said debt that the State had or has by law, and the Governor and Secretary of State shall give such party or parties paying such indebtedness a certificate showing the facts, which shall be evidence against said company of such indebtedness to said individuals or corporations.

SEC. 7. *Be it further enacted*, That any person or persons may, with the consent and approbation of any railroad company which is indebted to, and for which the State of Tennessee holds a lien, pay the said debt, *so far as the State is concerned*, in the bonds of the State, or any coupons of bonds at par, and the person or persons so paying the debt of any railroad company with the consent of such railroad company, shall, upon filing with the treasurer of this State the written assent of said railroad company, under the corporate seal of said railroad company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being to place the person or persons so paying with the consent of said railroad company in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

SEC. 8. *Be it further enacted*, That any person or persons who may with the consent and approbation of any railroad company, pay any part or portion of the indebtedness of such company, as provided in Sec. —, shall have, hold, and be subrogated in all the rights, privileges,

and lien or liens of the State, to the extent of, and in proportion to, the amount of such indebtedness, with the same rights and privileges the State now has, to the extent of such payment or payments: *Provided, the passage of this act shall not decrease the lien of the State upon any railroad of the State until the entire claim of the State is fully liquidated,* OR AFFECT THE INTEREST OF THE PRESENT BONDHOLDERS OF THE STATE; *Provided, that railroad companies which have issued second mortgage bonds, availing themselves of the provisions of this act, shall file with the comptroller bonds of the same series as those loaned to such company, for which the State holds a first mortgage lien. Provided, the bonds to be issued by the company, under the provisions of this act, shall not have a longer time to run than the bonds of the State thus released and canceled.*

SEC. 9. *Be it further enacted,* That this act shall take effect from and after its passage.

Exhibit F.

ACT OF JANUARY 2, 1870.

AN ACT for the Payment of the State Debt.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee,* That an Act entitled "An Act to liquidate the State debt, contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, be, and the same is hereby amended, so as to allow any railroad company which may be indebted to the State by reason of the bonds of the State loaned to said railroad company, to pay into the State, in liquidation of the principal of said indebtedness, any of the legally-issued six per cent. bonds of the State of Tennessee outstanding, without regard to series or number; and such payment shall, to the extent made, be a full and perfect discharge of the lien which the State holds upon the property of such railroad company, held by virtue of the bonds of the State issued to such railroad company, whether they be the same bonds or the same series of bonds issued to said company under the act passed February 11, 1852, and acts amendatory thereof, or not.

SEC. 2. *Be it further enacted,* That railroad companies issuing their own mortgage bonds under the provisions of the act which this is intended to amend, be allowed to fix the rate of interest which the said bonds of the railroad company are to bear, and all laws in conflict are hereby repealed. *Provided,* that when said railroad companies owe interest already due, coupons past due shall be taken by the comptroller or treasurer in discharge of such indebtedness for interest.

SEC. 3. *Be it further enacted,* That when any company, under the provisions of this act, shall pay into the treasury of the State bonds which have been issued by the State to said company, the said bonds

shall be canceled; but should any company, in discharge of its own debts, pay into the treasury any bonds that were issued to other companies that may still be indebted to the State, such bonds so paid in shall not be canceled, but shall be held by the State as purchased bonds, retaining a lien for the State upon the road to which said bonds were originally issued until the debt of said road to the State shall be fully discharged, when the bonds so held shall be canceled. *Provided*, that the provisions of this act shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund, now required by law, of the railroad companies of this State.

SEC. 4. *Be it further enacted*, That this act shall take effect from and after its passage.

United States Circuit Court,

SIXTH JUDICIAL CIRCUIT.

MIDDLE DISTRICT OF TENNESSEE,

IN EQUITY.

CALVIN AMORY STEVENS, ON BEHALF OF THE HOLDERS OF INTERNAL IMPROVEMENT BONDS OF TENNESSEE, ISSUED TO THE NASHVILLE AND CHATTANOOGA RAILROAD COMPANY,

versus

THE NASHVILLE CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY.

ANSWER.

EAST & FOGG,
R. McP. SMITH,
Solicitor and of Counsel for Respondents

Answer of the Nashville, Chattanooga and St. Louis Railway) sued by the names of the Nashville, Chattanooga and St. Louis Railroad Company, and the Nashville and Chattanooga Railroad Company), to the Bill of Complaint of Calvin Amory Stevens, filed against the respondent in the Circuit Court of the United for the Middle District of Tennessee, No. 2,463.

Respondent reserving the benefit of all proper exceptions to the many errors and imperfections of said bill, in answer thereto, says as follows:

Respondent is a corporation, chartered by the State of Tennessee, December 11, 1845, with powers as mentioned in said bill, by the name of The Nashville and Chattanooga Railroad Company; its name being subsequently changed to the Nashville, Chattanooga and St. Louis Railway (not Railroad Company, as complainant has it). Complainant's bill is filed against respondents by its present corporate name except for said slight misnomer, and also by its former corporate name, as if the two names designated distinct defendants, instead of, as is the fact, one and the same corporate entirety.

Exhibit A mentioned in said bill has not been furnished to respondent, which, therefore, can neither admit nor deny its correctness; but respondent supposes its contents to be matters of judicial cognizance.

The copy of the act of February 11, 1852, set out in the bill, is substantially correct, except in its punctuation and italics; but respondent dissents very widely from complainant's construction of said act.

Respondent is advised that the bonds issued under said act, and the amendments thereto, were obligations of the State of Tennessee alone. The State being payer, and the bearer payee, and the

names of the companies nowhere appearing thereon. Nor was any special record kept by the State of what particular bonds were issued to each company; though, as a record was kept of all State bonds, whether issued under the internal improvement laws or for general purposes, it is, of course, practicable, by sufficient research, to trace any State bond.

The internal improvement bonds were not supposed, at the time they were issued, to be anything more than mere State bonds. They were sold and purchased without any reference to what companies they were issued, and on precisely the same footing as other State bonds issued for general purposes. There was no difference of price. It was not imagined that the respective railroads were in any contingency, primarily or secondarily, liable upon the bonds of the State issued to them. This is an after thought, not conceived until the State seemed likely to repudiate her bonds, when, indeed, the notion of shifting off the State debt upon the railroads, did receive some countenance, individual and official, not wholly unexpected; and it is barely possible that some persons may have, by this time, convinced at least themselves that they always regarded the bonds, in the hands of their purchasers as liens upon the railroads.

Respondent is advised that the lien reserved by the State upon the issuance of her bonds under the internal improvement laws, was for her own benefit exclusively—and that, too, as the creditor, not the surety, to the companies; and that the purchasers of the bonds have never had any interest in said lien. Also, that while the various provisions were made looking to the security of the State in different contingencies, the mode in which it was contemplated that the lien on account of the issuance of the bonds should be discharged, was

through the operation of a sinking fund, to begin five years after the completion of the respective companies, the amount of said fund being originally one per cent. of the amount of bonds issued, but subsequently increased, said fund to be applied to the purchase of any bonds of the State, to be thereupon assigned to the Governor of the State, and paid into the treasury; and the amounts of the payments to be credited upon the bonds which had been issued.

These credits, of course, could be only as between the State and the companies, as the bonds themselves would be outstanding in the hands of the purchasers.

In addition to the lien retained by the State upon the railroads to which her bonds were issued respectively, she reserved the right of such further legislation as might be necessary to protect her interest and secure her from loss on account of the issuance of her bonds.

It would appear to be incontrovertible that the State reserved a lien for her own benefit as the creditor of the companies; so that if there be a lien also for the benefit of the bondholders, it must be the case of of a distinct and independent lien, arising from the very same words. Surely it must be very far-fetched construction that can yield so remarkable a result as this.

It is true, that section 3 of the act of February 11, 1852, declares "that, so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon such section," etc., but the subsequent language, "and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage without deed from the company, for the payment by said company of said bonds with interest thereon, as the same becomes

due." This shows very clearly that the act as a whole evinces unmistakably that the lien is exclusively for the benefit of the State as the creditor of the company on account of the bonds issued; the lien attaching to the road section by section in the process of construction, upon its completion the whole amount of the bonds issued constituting a lien upon the entire road.

Section 4 provides explicitly that "the said lien or mortgage of the State shall have priority over all other claims existing or to exist against said company."

Exhibit B to said bill sets forth, with substantial correctness, what it purports to contain.

Exhibit C is a substantially correct copy of one of the internal improvement bonds of the State of Tennessee.

It is true, that $395,000 of bonds of said State were issued to respondent, but complainant seems to misconceive the occasions and purposes of their issuance.

$ of said bonds were issued under the act of March 20, 1858, to aid in the construction of what is known as respondent's Jasper Branch, extending from Bridgeport, Alabama, to Jasper, Tennessee, all of said branch road being without the Middle District of Tennessee, and these bonds never constituted a lien, except upon said branch road, or at least that part of the same lying within the State of Tennessee; and $ of said bonds were issued under the act of November 4, 1859, to aid in the improvement of that portion of respondent's road extending from Stevenson, Alabama, to Chattanooga, Tennessee, all of it being without the Middle District of Tennessee; and said bonds never constituted a lien, except on said portion of said road, or at least that part of the same lying within the State of Tennessee.

Respondent denies that $157,000 of said $395,000 of bonds are now outstanding, and says that the true amount is $

Respondent does not know whether the holders of these are numerous or not, nor whether they reside in foreign countries and in different parts of the United States or not, nor whether complainant holds or owns any of said bonds, or any coupons of any; nor can respondent admit the details, or any of them, at the bottom of page 16 of the bill, as to the numbers, letters and color of said $395,000 of bonds, but requires proof of all said matters if material.

It is true, that the $395,000 of bonds were all sold, and respondent supposes that such of said bonds as are now outstanding have unpaid coupons from January 1, 1876, inclusively, as the State paid no interest then, nor has paid any since.

Respondent would show that the aid extended to it by the State of Tennessee, in the original construction of its road, except the Jasper Branch, was in the shape of any indorsement by the State of the bonds of respondent, to the amount of $2,000,000, secured by a first mortgage on its road, antedating the issuance of the said $395,000 of State bonds. Afterward, respondent being indebted to the United States, in the amount of $1,000,000, for which it had issued its 4 per cent. bonds, securing the same by a mortgage upon its road from Nashville to Chattanooga, and, needing money to procure bonds of the State to be used in the purchase of the Nashville and Northwestern Railroad, and moreover in the discharge of its indebtedness to the State on account of said $395,000, respondent executed its own 7 per cent. bonds to the amount of $6,680,000, and, to secure the same, mortgaged its entire road, including what was formerly the Nashville and Northwestern Railroad, and respondent,

after setting aside $1,000,000 of said bonds, as a provision for the $1,000,000 of 4 per cent. bonds, held by the United States, made use of the residue in taking up said $2,000,000 of its bonds indorsed by the State of Tennessee in paying for the Nashville and Northwestern Railroad, and in discharging its indebtedness to the State on account of said $395,000 of bonds.

It is true that respondent proceeded under the provisions of the legislation of 1869 and 1870, referred to by complainant's bill, in discharging so much of its indebtedness on account of said $395,000 of bonds as was paid off by it in other bonds than these.

And respondent is advised that said legislation was perfectly valid, and that none of the holders of said bonds were in anywise concerned therein, the State alone being their debtor, and the lien on account of the issuance of said bonds such as it was, and the statutory remedies existing for the benefit of the State exclusively.

The charges of said bill as to the inception of the "project" of treating the liens upon the railroads of the State as the absolute property of the State, are utterly untrue. Nobody ever doubted, until very recently, that these liens were the absolute property of the State, and respondent supposes that very few entertain any serious doubt of it even now.

The conduct of the State since the war evinces very clearly that she did not regard herself as merely a trustee of said liens for the benefit of the bondholders, and the conduct of the bondholders, until very recently, evinces with equal clearness that neither did any of them view the matter in that light.

During the war, the railroads of the State either lay idle or were operated by the two contending parties.

At the close of the war, the interest on the bonds of the State was unpaid, and many of the railroads that had received State aid were insolvent. Many fell into the hands of receivers, but they were, without exception, operated at a heavy loss. In the vain hope of revitalizing the roads of this class, the State issued to them bonds as follows:

Edgefield and Kentucky	$525,000
Nashville and Northwestern	1,767,000
Memphis, Clarksville and Louisville	540,000
McMinnville and Manchester	400,000
Winchester and Alabama	856,000
Southwestern	503,000
Knoxville and Kentucky	2,150,000
Knoxville and Charleston	816,500
Cincinnati, Cumberland Gap and Charleston	1,241,000
Rogersville and Jefferson	226,000
Total	$8,024,500

Surely, if the State had regarded herself as a mere trustee, she would not have made these large advances. And she did more: she twice funded the unpaid interest on the bonds issued to the companies before the war, as well as the interest on those issued afterward, amounting to millions, besides making no payments of interest.

Every expedient was tried in vain, and no alternative was left but for the State, under her reserved right of further legislation, to provide for a sale of the delinquent roads.

The idea of selling the delinquent railroads was entertained by the State, at least, so early as December 7, 1867. Section 15 of the act of that date provided "that if the several railroad companies, or either of them, to which the bonds of the State have been loaned by this act, or former acts, shall

fail for two consecutive years to pay the interest that may accrue upon the bonds loaned to them severally, then, in that case, the governor, secretary of state, and comptroller may, at their discretion, sell said railroad track, railing, rolling stock, etc., upon such terms and conditions as they may deem best to secure the interest of the State, and shall retain of the proceeds of said sale the amounts loaned to said companies and the interest due on the same, with expenses of said sale."

Respondent knows nothing whatever of any agents of the railroad companies, in 1869 or 1870, drafting bills for the legislature of Tennessee, which, as modified, became the acts of February 25, 1869, and January 2, 1870.

Respondent conjectures that for this portion of his bill complainant drew upon his imagination solely, and that it has no foundation in fact.

About all that is true of the statement as to the opinion of Edward H. East is, that he did express such an opinion. An opinion had been prepared by a distinguished lawyer of Alabama upon the subject of the nature of the State's lien upon her railroads, with reference to the question of the priority of a mortgage, which one of the companies proposed to execute to secure its bonds, with the proceeds whereof the indebtedness of the company to the State was to be discharged. This opinion was sent to the attorney of said company at Nashville, by whom it was submitted to Mr. East, who united with said attorney in subscribing the opinion; whereupon it was forwarded to distinguished counsel in New York, who, after an independent examination of the questions involved (if indeed they can be seriously regarded as questions), came to the same conclusion; and this view of the matter was thereupon accepted and acted upon by capitalists in

New York in the negotiation of the mortgage bonds of said company.

But none of the officers of respondent ever saw this opinion; nor does respondent believe that any member of the legislature ever saw or even heard of it, as it was published only in pamphlet form, and very few copies were printed. The act of December 7, 1867, embodying the same view of the rights of the State as that taken by the opinion, was passed long before the preparation of the opinion.

Respondent is advised that it is quite true that the acts of 1869 and 1870, referred to by complainant, did not, in any respect, affect any rights of any of the bondholders, and that neither did any of the subsequent legislation, nor the proceedings resulting in the sales of delinquent railroads, affect any such rights—as none of the bondholders ever *had* any rights capable of being impaired by any such legislation or proceedings—their only right being to be paid by the State of Tennessee—the lien upon the railroads, and the statutory remedies provided by the internal improvement laws, existing, as aforesaid, exclusively for the benefit of the State as a creditor of the companies.

The receivers appointed, from time to time, by the State to operate delinquent railroads accounted to the State alone. No attempt was ever made by any bondholder to hold any of them accountable, nor did any bondholder ever manifest the slightest concern as to who was appointed receiver of any road, though it was notorious that divers of said receivers were guilty of flagrant mismanagement, if not even of worse.

Any surplus in the hands of any receiver was always appropriated by the State to its own uses, but no complaint was ever made of this by any bondholder, nor was any attempt ever made to reach the funds in any receiver's hands though the State was,

at the time, in default as to the interest on the bonds issued to the particular road among others.

When the receivers did not realize enough to pay the operating epxenses of their roads, and to keep them in safe condition, it was notorious that the State would frequently make large appropriations of additional bonds to make up the deficiency, thereby swelling the incumbrance upon the roads, yet no bondholder ever manifested the slightest concern at any thing of the kind.

Respondent is informed that complainant has been, and is, the secretary of an association in New York city, representing the great bulk of the bonds of the State of Tennessee issued to the railroad companies, and that he and his associates have been perfectly familiar with the claim of said State to the exclusive benefit of said lien, as evidenced by nearly every statute upon the subject of State aid to internal improvements. It was notorious, and was well known to them, that for several years prior to the sale of the delinquent roads, it was the intention of said State to enforce its lien, claimed exclusively as aforesaid, by a sale of said roads.

From the passage of the act of February 25, 1869, to the sales of said roads, nearly three years elapsed, during which divers acts were passed in furtherance of this intention, creating a commotion, with which the entire railroad world was astir. The proceedings to effect the sales of the delinquent roads were notorious, and were perfectly well known to complainant and his associates, and so was the action of respondent in executing the $6,680,000 of its aforesaid bonds, and securing them by what purported to be a first mortgage on its entire line; a large portion of these bonds, as was well known to complainant and his associates, being intended to be applied in procuring State bonds, to be used in payment for one of the delinquent roads.

The Nashville and Northwestern Railroad, purchased by respondent at the sale under the State's decree, and the mortgage executed by respondent, purporting to be a final lien on said purchased road, the bonds issued by respondent containing on their face a certificate to this effect by the Secretary of State of Tennessee.

Complainant and his associates were perfectly well aware, as was everybody else, even remotely interested, that in consequence of the purchases of the delinquent roads, to be paid for in Tennessee bonds, the bond markets in New York and elsewhere were greatly excited, immense fluctuations occurring in the prices of Tennessee bonds, some $9,000,000 of which were purchased in a short time by respondent and others in open market, for the avowed purpose of using them in payment for said railroad, claiming that such payments were in full discharge of the lien of the State of Tennessee.

It was notorious, and was perfectly well known to complainant and his associates, that the companies purchasing delinquent railroads were claiming the right to them free from every incumbrance, and that, in order to raise the means to procure the State bonds necessary to pay for them, they were issuing their own bonds—known as substitution bonds—purporting to be first liens on the purchased roads; the amount of these substitution bonds issued being some $20,000,000, which were sold in open market, mostly in New York city. It was also notorious, and equally well known to complainant and his associates, that the purchasing roads, finding their purchases in wretched condition, expended thereafter enormous sums in repairing (in some instances almost reconstructing) them and in developing their business.

Yet, down to about the time of the commencement of the present suit—some ten years after the

passage of the act of February 25, 1869—not a single bondholder ever took any step or gave out any utterance showing that he imagined that he had the smallest interest in any of the foregoing matters.

So that it is sufficiently apparent that it was not doubted by the bondholders any more than it was by anybody else, that the lien upon the railroads and the remedies provided by the internal improvement laws were for the exclusive benefit of the State of Tennessee.

The idea upon which complainant's bill is founded, that the bonds issued by the State of Tennessee to her railroad companies, under her internal improvement laws, constituted in the hands of their purchasers a lien upon the respective roads. The State holding the lien as a trustee for the bondholders was never conceived by any one until very recently, when it was produced by the ingenuity of astute counsel, stimulated by the exigency of a desperate situation, the State, the sole debtor upon the bonds in question, refusing to pay and being unsuable.

And, now, having fully answered complainant's bill, respondent prays to be hence dismissed with costs.

EAST & FOGG,
R. McP. SMITH.

The following seal of said Nashville, Chattanooga and St. Louis Railway is affixed by authority.

[SEAL.] E. W. COLE, *President.*
R. C. BRAMFORD, *Secretary.*

1

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

In Equity.

2

CALVIN AMORY STEVENS, on behalf of the Holders of Internal Improvement Bonds of Tennessee issued to the Nashville and Chattanooga Railroad Company,

versus

3

THE NASHVILLE AND CHATTANOOGA RAILROAD COMPANY, and THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY.

The repliant, saving and reserving to himself all and all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and in- 4

5 sufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable Court shall direct; and humbly prays as in and by his said bill he hath already prayed.

E. L. ANDREWS,

6 *Solicitor for Complainant.*

7

8

United States Circuit Court,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS, EUGENE KELLY and JOHN T. TERRY, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Nashville and Chattanooga Railroad Company,

versus

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY *et al.*

To the Honorable the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Middle District of Tennessee:

The petition of EUGENE KELLY and JOHN T. TERRY to your Honors respectfully shows—

That your petitioners are owners and holders of Internal Improvement Bonds issued on account of the Nashville and Chattanooga Railroad Company for the construction and equipment of its said road.

Your petitioners' said bonds are identified and numbered according to the description in the bill in this suit, and have the like number of overdue and unpaid coupons attached thereto. The schedule hereto attached and prayed to be taken as a part of this petition exhibits their ownership and holdings of said bonds.

Your petitioners likewise constitute a majority of the Committee of Tennessee Bondholders, representing thirteen (13) owners and holders of Internal Improvement Bonds issued to the Nashville and Chattanooga Railroad Company, owning and holding twenty-three bonds issued to said company by the State of Tennessee.

Your petitioners desire to unite in the prosecution of the bill herein, and to be joined as co-complainants, according to the frame of the suit and the course and practice of this Court, with leave to amend the title and formal allegations of the bill to conform to this petition. A copy of said amendments is hereto attached.

And your petitioners accordingly pray for the foregoing relief and such other order as may be appropriate in the premises.

EDWARD L. ANDREWS,
Solicitor and of Counsel for Petitioners.

UNITED STATES OF AMERICA,
Southern District of New York. } ss.:

On this 19th day of August, A. D. 1879, before me personally appeared EUGENE KELLY and JOHN T. TERRY, who, being duly and severally sworn, says, each for himself: That the matters and things stated in the foregoing petition are true, so far as the same are stated of his own knowledge, and so far as stated on information and belief he believes them to be true.

WILLIAM H. DE LANCY,
Notary Public,
Westchester County.
Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT — MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS, EUGENE KELLY and JOHN T. TERRY, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Nashville and Chattanooga Railroad Company,

versus

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILROAD COMPANY *et al.*

On the foregoing verified petition, and on motion of Edward L. Andrews, Solicitor for Complainants,

It is ordered, that Eugene Kelly and John T. Terry be, and the same are, hereby admitted as co-complainants in this suit, and the formal amendments attached to the said petition are hereby allowed.

Aug. 20, 1879.

W. STRONG, *J.*

Middle District of Tennessee:

I, LEWIS T. BAXTER, Clerk of the Circuit Court of the United States, for said district, do hereby certify that the foregoing is a true and perfect copy of the petition of Eugene Kelly and John T. Terry, to be admitted as co-complainants in the above-entitled cause, together with the order of the Court thereon, as the same appears of record and on file in my office.

Witness my hand and the seal of said
[L.S.] Court, at Nashville, in said district, this 30th of August, 1879.

LEWIS T. BAXTER,
Clerk,
By E. R. CAMPBELL,
Deputy Clerk.

CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS, EUGENE KELLY and JOHN T. TERRY, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Nashville and Chattanooga Railroad Company,

versus

THE NASHVILLE AND CHATTANOOGA RAILROAD COMPANY, and THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY.

Amendments to Bill.

On page 17, at the end of the second paragraph, after the word "Tennessee," insert

"Your orator, John T. Terry, is the owner and holder of one of said bonds, and the same are of like description with those of your orator Stevens above set forth.

Your orator, Eugene Kelly, is also the owner and holder of five of said bonds, which are similar in all respects to the bonds above described."

On the first line of the next paragraph, after the above amendment, and after the word "orators," insert "Stevens, Kelly and Terry," and after the

word "likewise," on the same line insert the word "respectively." After the word "bonds," on the second line of the same paragraph, insert the words "alleged to belong to them respectively."

On the seventeenth line of the seventeenth page, twenty-one lines from the bottom of the page, insert the following:

"The said bonds are numbered and identified respectively as follows: One belonging to John T. Terry is numbered 10762, and is a white bond, series B; those belonging to Eugene Kelly are numbered 10772, 10773, 11201, and are white bonds, series B.

At the end of the word "orator," wherever it occurs in the bill, add the letter "s"; and after the name "Stevens" add the following: "Eugene Kelly and John T. Terry."

Make the pronoun and verb to which the word "orators" relates plural, instead of the singular number.

EDWARD L. ANDREWS,
Solicitor for Complainants.

United States Circuit Court,

MIDDLE DISTRICT OF TENNESSEE.

1

IN EQUITY.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY IN THE CASE OF THE NASHVILLE & CHATTANOOGA RAILROAD COMPANY,

2

ads.

CALVIN AMORY STEVENS AND OTHERS.

Answer to Amended Bill.

3

EAST & FOGG,
R. McPHAIL SMITH,
Solicitors and Counsel for Defendants.

4

IN THE

Circuit Court of the United States

FOR THE MIDDLE DISTRICT OF TENNESSEE.—SIXTH JUDICIAL CIRCUIT.

IN EQUITY.

The answer of the NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY and the NASHVILLE & CHATTANOOGA RAILROAD COMPANY, defendants, to the bill of complaint, as amended, of Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, on behalf of themselves and the other holders of the Internal Improvement bonds issued by the State of Tennessee to the Nashville & Chattanooga Railroad Company, who may come in and contribute to the expenses of the litigation.

These defendants, answering the said bill as amended, here repeat and make part of this answer the original answer which they heretofore filed to the said bill before the amendment thereof as such bill was filed by the said Calvin Amory Stevens, without joining the said Eugene Kelly, John T. Terry and Peter Geddes, the now co-complainants, and a printed copy of which original answer is hereto annexed, and everything in the said original answer contained, as fully and with like effect as if such original answer and everything therein contained were set forth at large and embodied in this answer, and, in addition thereto, these defendants hereby make the like allegations, statements, objections, defences and claims respectively as to and in

respect of and against the complainants in the bill as now amended, and each and every of them, and as to and in respect of the Tennessee State bonds and the coupons thereof by the amended bill alleged to be held or owned by the complainants respectively, or by any of them; and as to and in respect of all former owners and holders of such bonds respectively, or the coupons thereof; and as to and in respect of all and each of the claims asserted in the bill as amended by or on behalf of the complainants respectively, as in the said original answer filed by these defendants were contained, as to or in respect of or against the said original complainant, Calvin Amory Stevens, or as to or in respect of the Tennessee State bonds or the coupons thereof, in the said original bill alleged to be owned or held by him, or as to or in respect of any former owner or owners of such bonds or coupons respectively; or as to or in respect of all and each or any of the claims asserted by the said Calvin Amory Stevens, in his said original bill; and these defendants hereby repeat and make the said original answer, and everything therein contained, applicable to the present complainants and each of them, and to the bonds and coupons alleged to be owned or held by them respectively, and to the alleged claims and causes of suit now alleged by the complainants, or any of them, as fully and completely as the same were by said original answer applicable to said Calvin Amory Stevens and the bonds and coupons alleged to be owned or held by him, and the alleged claims and causes of suit which were set forth in his said original bill.

And these defendants, further answering the said bill, as now amended, make additional answer thereunto as follows—that is to say:

These defendants have no knowledge or information that the complainants, respectively, or any or either of them are, or at the time of the filing of the

bill, or of the amendment thereof, by bringing in the new complainants, were the owners or holders of the bonds of the State of Tennessee issued to the Nashville & Chattanooga Railroad Company, or any of the same, or of the coupons thereof, or any of the same, which in the bill, as amended, are alleged to be held or owned by the complainants, respectively; and these defendants are wholly ignorant and uninformed of the truth of the allegations of the bill, as amended, in this behalf, save that they have been informed, and believe, and therefore aver, that the complainant, Stevens, was not at the time of the filing of the bill, nor at the time of the amendment thereof, and is not now the owner or holder of the said bonds and coupons which he claims to own, nor of any of the same; and that the other complainants, respectively, at the time of their uniting in this suit were not, and now are not the owners or holders of said bonds and coupons, which they, respectively, claim to own, nor any of the same; and these defendants deny each and all of the allegations of the bill relating to the alleged ownership or holding by the complainants, respectively, of said bonds and coupons, and require the complainants to make strict proof thereof.

And these defendants further answering say, that before and at the time of the enactment of the said Internal Improvement law of February 11th, 1852, it had been ascertained by experience, and was at said time well known and understood and perfectly notorious, both in Tennessee and New York, that Tennessee State bonds pure and simple, resting upon the faith and credit of the State and upon that alone, and not secured to the holder by any lien upon a railroad or upon anything else, had a better credit and brought and would bring a higher price in the market, than the bonds of Tennessee railroad companies, secured by mortgage liens upon their

railroads, and further secured by the endorsement or guaranty of such bonds by the State of Tennessee, and that at that time the price in the market of the Tennessee railroad companies' mortgage bonds, endorsed by the State of Tennessee under legislative acts antecedent to said Internal Improvement Act of February 11th, 1852, of which endorsed bonds there was then a considerable amount outstanding, was materially less than the market price of Tennessee State bonds pure and simple, resting alone upon the faith and credit of the State, and in respect of which there was no lien, or pretence of a lien upon a railroad or upon anything else, and that the said Internal Improvement Act of February 11th, 1852, was shaped as it was with the design and purpose of gaining in the negotiation of the bonds issued thereunder such advantage in price of Tennessee State bonds, pure and simple, and for which the State was primarily and alone liable, over railroad mortgage bonds on which the State was or should be liable as surety; and that the actual sales and negotiations by the Nashville & Chattanooga Railroad Company and by the other railroad companies respectively, of the Tennessee State bonds received by them respectively under said Internal Improvement Act of February 11th, 1852, and under the amendments thereof, from time to time, were made under and in conformity with the idea, design, and purpose hereinbefore last above stated, and the purchases and takings thereof were in like conformity, and with the like idea, and said bonds upon the original sales and negotiations thereof by the Nashville & Chattanooga Railroad Company, and by the other railroad companies receiving bonds under said act respectively, were accordingly sold and purchased upon the understanding that they were Tennessee State bonds, pure and simple, for which the holder was to look to the State, and to it

alone, and not bonds primarily payable by a railroad company, and for which the State was to be regarded as a surety, nor bonds in any way secured to the holder by or connected with a railroad lien or by any responsibility of a railroad company for the payment thereof to the holder, and said bonds accordingly commanded and brought in the market the aforesaid advantage in price borne by Tennessee State bonds, pure and simple, for which the State was primarily and alone liable, over railroad mortgage bonds, upon which the State was surety, and that all subsequent purchases of and dealings in said bonds were upon the same understanding and footing, and that the idea of said bonds being anything else than Tennessee State bonds, pure and simple, or that there was any personal liability of the railroad companies to which said bonds had been lent by the State, for the payment of either the interest or principal of such bonds to the holders, or any lien upon the railroads respectively, in favor of or in any way available to or for the benefit of the holders of such bonds, was not entertained nor conceived by the complainants or by any of the holders of the bonds they now claim to own, nor by any other holders of Tennessee State bonds issued under said Internal Improvement Acts, until very shortly before the commencement of this suit, nor until long after the settlement made by the defendant, the Nashville, Chattanooga and St. Louis Railway on behalf of and successor of the Nashville and Chattanooga Railroad Company, with the state of its indebtedness, for or in respect of the bonds which had been loaned to it under said Internal Improvement Act, and the similar settlements made by other railroad companies.

And these defendants further answering, say, that prior to ———— the Nashville & Chattanooga Railroad Company paid to the State

of Tennessee under and in pursuance of the re- 25
quirements of the statutes referred to in the original answer the sum of ———— upon account of the said railroad company's indebtedness to the State for and in respect of the principal of the Tennessee State bonds loaned to said company under said Internal Improvement Act, and received in pursuance of said acts a receipt for such payments and an acknowledgment of discharge of the debt *pro tanto*.

And these defendants, further answering, say, 26
that as early as the year eighteen hundred and sixty-five, the State of Tennessee made a settlement with the Louisville & Nashville Railroad Company for and in respect of the entire amount of its indebtedness to the State for and in respect of the principal and interest of the Tennessee State bonds which had been loaned to said company under the Internal Improvement Act aforesaid, by receiving, in payment and satisfaction of such indebtedness, Tennessee State bonds at par, not being the identi- 27
cal bonds which had been loaned to that company, unless in so far as some small amount of those bonds may accidentally have been included in the bonds so received in settlement, and thereupon giving to said railroad company a full release and discharge for such indebtedness, and of the lien therefor, under the Internal Improvement Act, and in such transaction the State of Tennessee distinctly asserted or assumed the existence of the State's full, complete and unqualified ownership and control of such debt 28
and lien, with the right thus to deal with and discharge the same, and the non-existence of any right on the part of the holders of the State bonds, which had been loaned to said railroad company, to interfere with or question or complain of the same, the State of Tennessee then being and for several years having been in default in respect of the payment of

the interest on said bonds as well as upon its other indebtedness. The acts and proceedings of the State of Tennessee, under which this settlement was made with and discharge given to the Louisville & Nashville Railroad Company, were open, public and notorious, and included joint resolutions of the legislative bodies of the State and proceedings of a Board of State officers, all distinctly proceeding upon such basis of complete ownership, control and right of settlement and discharge vested in the State, and of non-existence of any right or interest of the State bondholders, and the same covered a period of many months before the settlement was actually effected and the discharge given; and during all this period the assertion or assumption of the existence of such right and power on behalf of the State and the State's intention to exercise it, were open, public and notorious, as well in New York and elsewhere where Tennessee State bonds were held as in Tennessee, and well known to and understood by the great mass of Tennessee State bondholders, including the complainants respectively, and the then holders of the bonds which they now claim to own, and neither the complainants, nor any of them, nor any holder of Tennessee State bonds ever raised or intimated any objection to, or denial or question of such right or power on the part of the State, or gave notice of, or asserted, set up, or even intimated or suggested that the lien upon the railroads under the Internal Improvement Acts was one in which the State bondholders had any right, title or interest, but they each and all willfully and knowingly refrained from so doing, and stood by and saw the said transaction take place without objection, and fully and completely acquiesced in, admitted and assented to the claim, assertion and exercise by the State of such right and power on its behalf, thus to control, deal with

and discharge such debt and lien, and after such 33
non-notification of claim and acquiescence, and practical recognition of and assent to such claim, right and exercise of power by the State, and non-existence of any interfering right or title on the part of the bondholders, and after the many years of subsequent delay and acquiescence, the holders of said Tennessee State bonds, including the complainants respectively, are now equitably estopped from setting up the contrary construction of the Internal Improvement Act which the complainants 34
now assert, or from impeaching the settlements made with, and the releases and discharges given to these defendants, or one of them, and the other railroad companies respectively by the State of Tennessee under the like right, control and power as was so asserted and acquiesced in in respect of the settlement with the Louisville & Nashville Railroad Company.

And these defendants hereby set up and make part of this answer with like effect as if here re- 35
cited at large the Act of the Legislature of the State of Tennessee, entitled, "An Act to fund the past due bonds and coupons of the State, and to sustain the credit thereon," approved March 17, 1873.

And these defendants further say, that the complainants respectively, and the respective holders at the time being of the bonds which they now claim to hold, as well as the other holders respectively of the Tennessee State bonds, issued and loaned under the said Internal Improvement Act of February 11, 36
1852, and its amendments respectively, from time to time, to the Memphis & Charleston Railroad Company, as likewise to the other railroad companies respectively, funded respectively the past due coupons of their said bonds, under and in pursuance of said Act of March 17, 1873, and received new State bonds therefor, as by said Act provided,

and likewise registered, or procured to be registered, under and in pursuance of said Act of March 17, 1873, the said Internal Improvement bonds of the State of Tennessee, so by them held, and accepted and assented to said Act of March 17, 1873, and that such action on their part respectively, was with full notice and knowledge of the previous Acts of the Legislature of Tennessee, before referred to herein, and in the original answer of this defendant herein, and particularly the said Acts of March 20, 1860, February 25, 1869, January 2, 1870, and of the several acts and proceedings had in pursuance thereof, and likewise of the proceedings in Chancery under which divers of the Tennessee railroads, upon which liens were held, under said Internal Improvement Act, had been sold out for prices payable in State bonds not issued to the railroads whose roads were thus sold, and with full notice and knowledge that as to the said the Nashville & Chattanooga Railroad, as likewise, in respect of nearly all the railroads upon which liens had been created under the said Internal Improvement Act and its amendments from time to time, the State had made settlements for such indebtedness, and discharged or assigned the said lien therefor, or sold out the roads as aforesaid in enforcement of such lien, upon the basis and assumption of such lien being wholly owned by and controllable by the State at its pleasure, and that the State bondholders had no right or interest therein, and that by such transactions the State had, before such funding of coupons and registration of the bonds, become, as between itself and the railroad companies or their assigns, bound to pay or discharge such State bonds originally loaned to the railroad companies, as the proper debt of the State, without any recourse over against the railroad companies or their roads in re-

spect to the same, and that by such registration of 41
the bonds and funding of past due coupons, under
and in pursuance of said Act of March 17, 1873, the
said complainants respectively, and the said other
holders of Tennessee State bonds, which had been
issued under the Internal Improvement Act, with
its amendments from time to time, recognized,
treated, and dealt with the State as its sole debtor
for the principal and interest of such bonds, and
made new bargains and agreements with the State
in respect of the same varying the original terms, 42
and acquiesced in and assented to the practical
construction which had been put upon the Internal
Improvement Act in respect of the lien and its dis-
charge as aforesaid, and the settlements and dis-
charges which had been made by the State as afore-
said, and particularly such settlement with and dis-
charges given in respect of the Nashville & Chat-
tanooga Railroad Company's original indebtedness,
and its lien therefor upon its road, and that by rea-
son of the premises aforesaid the complainants res- 43
pectively and the said other holders of Tennessee
State bonds are estopped and precluded, if other-
wise they would not be, from impeaching or set-
ting aside such settlements and discharges, and
the settlement and discharge in respect of the debt
and lien of the Nashville & Chattanooga Railroad
Company and from setting up or asserting as
against these defendants or their property any such
claims as are set up or asserted by the complainants
in this suit. 44

And in addition to the matters alleged hereinbe-
fore and in the original answer of these defendants
herein, relative to the practical construction placed
upon the Internal Improvement Act of 1852 by the
State, the railroad companies and the State bond-
holders, in respect of the character and ownership
and control of the statutory lien upon the railroads,

created under or in virtue of said act, and relative to the acquiescence and assent of the complainants and the former holders of the bonds they claim to own, and the other holders of Tennessee State bonds issued under said Internal Improvement Act, and its amendments from time to time, and as to the several acts, doings, and proceedings of the State in respect of such lien, and the settlement and discharge of such debt and lien, these defendants further answering say that the complainants respectively, and the holders at the time being of the bonds, which they now claim to own respectively, and the other holders respectively of Tennessee State bonds, issued under said Internal Improvement Act, and its amendments from time to time, have in various other ways acquiesced and concurred in the practical construction placed by the State as aforesaid upon the said Internal Improvement Act, in respect to the character, ownership and control of the statutory lien created thereunder, and in the acts and proceedings of the State by which it has settled with the railroad companies for the indebtedness, and released and discharged or transferred the statutory lien therefor, and particularly that after many of such settlements and discharges had taken place, and with full notice and knowledge thereof, not only have they respectively fully acquiesced in and assented to the same, but some of the said State bondholders, and especially the complainants, or some of them, have, in communications with the State officers or authorities, urged the making of further settlements between the State and the railroad companies, under and in pursuance of the said Acts of 1869 and 1870, and the discharge thereby of so much of the railroad companies' indebtedness to the State, and of the statutory mortgage lien therefor, upon terms of payment in any State bonds at par, which

further settlements have accordingly been made and discharges of the lien given accordingly, and the complainants and the holders at the time being of the said bonds, which they now claim to own, and the holders of a great amount or proportion of the other Tennessee State bonds issued under said Internal Improvement Act, with like full notice and knowledge as aforesaid, have, in other dealings with the State, and communications with the State officers and authorities, recognized and treated their said bonds as obligations of the State alone, and in no respect liabilities of the railroad companies nor liens upon their roads, and have accordingly entered into negotiations with the State for the settlement of such bonds and for the reduction and compromse and extension thereof, as being debts of the State alone and not of the railroad companies, and have in other ways, the particulars whereof these defendants have not as yet been able to discover, but which, when discovered, they crave leave to give in evidence, manifested acquiescence in and assent to the aforesaid practical construction placed by the State upon the said act, and the settlements and discharges of such debts and liens made and given by the State as aforesaid.

And further these defendants say that the settlement made with and discharge granted to these defendants by the State of Tennessee as aforesaid, were so made and given by the States which was unquestionably legally vested with and the holder of such lien so by it discharged; that, if the plaintiffs could in any case be entitled (which these defendants nevertheless wholly deny) to impeach or question such release of the mortgage lien given upon full and valuable consideration by the legal holder of the mortgage, such right on their part could be at most no more than the equitable right of beneficiaries of a trust to question and disaffirm

a release given by the Trustee holding the legal title, as being contrary to their equitable rights; that such right could be exercised, if at all, only with due diligence, and without sleeping upon or holding in abeyance such right of disaffirmance, and must be exercised without any considerable delay, and before any considerable change in circumstances to the prejudice of the releasee; and that by reason of the long delay and tacit acquiescence in such release on the part of said complainants, and the former holders of their bonds, and the other holders of such Internal Improvement bonds, and further by reason of the great change of circumstances, viz.: a very great fall in the price and value of Tennessee State bonds which took place after the release and long before any such attempt at disaffirmance was made, as well as other material changes in circumstances, the complainants and the other Tennessee State bondholders have lost and are equitably estopped from the right of such disaffirmance, if they ever possessed it.

And these defendants further answering, say that the several acts and proceedings hereinbefore mentioned for settling and discharging the said indebtedness of the Nashville, Chattanooga & St. Louis Railway, for or in respect of the Tennessee State bonds loaned to its predecessors under the said Internal Improvement Acts, by receiving in payment thereof Tennessee State bonds at par, not being the particular bonds loaned to said company, and, thereupon, discharging the said statutory lien under said Internal Improvement Acts, and for the raising by the railroad company of the means wherewith to procure the State bonds used for such payment, upon the security of the so-called substitution bonds of said company, issued upon the basis and understanding of said original statutory lien being discharged or transferred to such substitution bonds,

and the similar transactions of the other railroad companies to which State bonds had been loaned under said Internal Improvement Acts, were, at the time of the occurrence thereof, and while the same were in progress, which was for considerable periods, open, public and notorious not only in the State of Tennessee, but likewise in the City of New York, and wherever else the Tennessee State bonds which had been loaned to the said Nashville & Chattanooga Railroad Company were held in any considerable quantity.

EAST & FOGG,
R. MCPHAIL SMITH,
Solicitors and of Counsel for Defendants.

Circuit Court of the United States,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

Calvin Amory Stevens, who sues on behalf of himself and other holders of Tennessee State Bonds issued to the Nashville and Chattanooga Railroad Company,

versus

The Nashville, Chattanooga and St. Louis Railway Company and others.

IN EQUITY.

Answer and Cross-Bill of Charles Burckhardt and others, aliens, holders of mortgage bonds of Nashville, Chattanooga and St. Louis Railway Company.

MATTHEWS, RAMSEY & MATTHEWS,
Solicitors.

STANLEY MATTHEWS,
Of Counsel.

The joint and several Answer of CHARLES BURCKHARDT, of Basle, Switzerland, of SOPHIE MYLIUS VON WILLER, of Milan, Italy, of CHARLES DIGGELMAN, of Zurich, Switzerland, and of LOUISE ISELIN, of Basle, Switzerland, Aliens, on behalf of themselves and others whose names are exhibited herewith, and all others similarly situated and in like interest, being Holders of Bonds of the Nashville, Chattanooga and St. Louis Railway Company, to the Bill of Complaint of CALVIN AMORY STEVENS, Complainant, who sues in his own behalf and on behalf of all Holders of Internal Improvement Bonds of Tennessee, issued to the Nashville and Chattanooga Railroad Company, against the Nashville, Chattanooga and St. Louis Railway Company and others, Defendants, in the United States Circuit Court for the Middle District of Tennessee.

And now come the following-named defendants, Charles Burckhardt, of Basle, Switzerland, Sophie Mylius Von Willer, of Milan, Italy, Charles Diggelman, of Zurich, Switzerland, and Louise Iselin, of Basle, Switzerland, who appear voluntarily by leave of the Court, in their own names and in their own behalf, and also on behalf of those whose names are set forth in the list of names herewith attached, marked "Exhibit No. 1," by Matthews, Ramsey & Matthews, their solicitors, and also on behalf of all others similarly situated, having a like interest, who may come in and be made parties hereto. And reserving and saving all benefit, advantage, or exceptions, or otherwise, that can or may be had, or taken

to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material to make answer unto, jointly and severally answering, say:

1. That these respondents hereby adopt the answer to said bill heretofore filed by their co-defendant, the Nashville, Chattanooga and St. Louis Railway Company, sued by the name of the "Nashville, Chattanooga and St. Louis Railroad Company," and the Nashville and Chattanooga Railroad Company, and all the matters and things therein set forth, as fully as if the same were here particularly repeated, and affirm and declare the same, and each allegation therein, to be true in substance and in fact, according to their information and belief, and rely upon the same as a complete and perfect answer and defense to said bill.

2. These respondents further answering say, that on or about the first day of July, in the year of our Lord one thousand eight hundred and seventy-three, the said, The Nashville, Chattanooga and St. Louis Railway Company, a corporation created, organized, and operated under and in pursuance of the laws of the States of Tennessee, Alabama, Georgia and Kentucky, their codefendant herein, entered into an indenture with Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, all citizens of the State of New York, wherein it was recited that, whereas, as the Nashville and Chattanooga Railroad Company purchased the Nashville and Northwestern Railroad; and, whereas, in pursuance of law, the name of the combined roads has been legally changed to the Nashville, Chattanooga and St. Louis Railway; and, whereas, by virtue of said purchase, and of the laws under which the said The Nashville, Chattanooga and St. Louis Railway Company, the party of the first part was created,

and of its organization, and in the exercise of its corporate rights, powers, and franchises, the said first party became and is vested with all and singular the corporate rights, powers, privileges, and franchises, and likewise vested with, and owner and occupier of, all property, real, personal, and mixed, and of all debts due, choses in action, rights of way, contracts, and all and every other interest whatsoever, which were held, owned, and lawfully possessed or exercised by, or which in any way or manner belonged or appertained respectively to the Nashville and Chattanooga Railroad Company, and the Nashville and Northwestern Railroad Company, corporations created and organized under, and by virtue of, the laws of the respective States of Tennessee, Alabama, Georgia, and Kentucky, as fully and as effectually as the same rights, powers, debts, contracts, rights of way, and other interests were held, owned, and exercised by the said last named corporations, or either of them, at the time of the consummation of the organization and executing said indenture; and that, whereas, said Nashville, Chattanooga and St. Louis Railway Company has paid in part, and will pay in full, to the State of Tennessee the purchase-money for the Nashville and Northwestern Railroad, and has also paid in part, and will pay in full, under the laws of the State of Tennessee, the indebtedness of the Nashville and Chattanooga Railroad Company for all bonds loaned it by said State, and will likewise deposit in the hands of the comptroller of the State of Tennessee, as prescribed by the Act of 1871, chapter 144, section 2, of the laws of the State of Tennessee, fourteen hundred and twenty-five thousand dollars of this issue of first mortgage bonds, therein secured, being equal to the amount of bonds indorsed by the State of Tennessee for said Nashville and Chattanooga Railroad Company, now

outstanding, and which fourteen hundred and twenty-five thousand dollars of six per cent. bonds and one million dollars, bearing four per cent. annual interest, and held by the United States government, against which latter sum an equal amount of the issue of bonds hereby secured are to be reserved and set apart to be hereinafter issued by the party of the first part, to be used only in paying off and discharging the said one million dollars, so long as the aforesaid liability of one million dollars, or any part thereof, remains unpaid; these two amounts of fourteen hundred and twenty-five thousand dollars and one million dollars are all the bonded obligations of any kind, other than the issue therein secured, of said corporation; and that to enable the said party of the first part to raise money with which to liquidate, pay, satisfy, and fully discharge the indebtedness incurred in the purchase, reconstruction, and equipment of the Nashville and Northwestern Railroad, and also for the purpose of perfecting its line of railway, and enlarging the capacity and extending the operating facilities for the business thereof, and also for the purpose of paying at maturity the present outstanding bonds and indebtedness, as above stated: the said party of the first part, acting in its regular annual convention of its stockholders, and by and through its board of directors, has resolved to issue and dispose of its bonds to an amount not to exceed twenty thousand dollars per mile on the main line and branches of its railroad, and to secure the payment of the same by a first mortgage or deed of trust on all property and franchises of said company; and that the party of the first part has prepared and executed, or will hereafter prepare and execute, its bonds of one thousand dollars each, numbered from one to six thousand eight hundred, inclusive, to the

amount of six millions eight hundred thousand dollars, dated July 1, 1873, one million dollars of which to be set apart as aforesaid, to be hereafter issued, shall be of such rate of interest not exceeding seven per cent. per annum in currency, or six per cent. per annum in gold, and in such form as may be hereafter prescribed by the said party of the first part; but falling due at like times with the bonds of five million eight hundred thousand dollars, hereinafter mentioned, and the remaining five million eight hundred thousand dollars, payable in lawful money of the United States, in New York, forty years after date, bearing interest at the rate of seven per cent. per annum, with coupons or interest warrants attached, payable semi-annually in lawful money of the United States, in New York, or payable in gold coin of the United States, and bearing interest at the rate of six per cent. per annum, payable in like gold coin of the United States, at New York, or with the coupons to be thereto annexed, and the certificates to be indorsed thereon in the forms therein set forth, which coupons are to be issued with the engraved signature of the secretary of the said company; and when thus issued by said company, are to be as binding upon it as if such signature were written by the secretary.

Therefore, the said indenture witnesseth, that for the purpose of securing and making more sure and certain the payments of the sums of money mentioned and provided for in the above-mentioned bonds, to the aggregate amount of six million eight hundred thousand dollars, bearing even date therewith, and each and every one of them with the interest thereon, according to the true intent and meaning thereof, and in consideration of the recited premises, and the sum of one dollar to the said first party in hand paid by the said Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, the

receipt whereof was thereby acknowledged by the said party of the first part, the said Nashville, Chattanooga and St. Louis Railway Company, the party of the first part aforesaid, granted, bargained, sold, assigned, transferred, and conveyed by the said presents to said Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, the parties of the second part, their heirs and assigns forever, and to their successor or successors, in the trust, and assigns, all and singular, the estate and property, real, personal and mixed, and all fixtures, rights, privileges, franchises, easements under leases, terms, and parts of terms, agreements, covenants, and contracts, of all and every kind, held and owned or occupied by said party of the first part, or whereunto it is entitled; including especially all and singular the railroads and railways of said company, with the appurtenances thereof, from and including the terminus and depot at Chattanooga in the county of Hamilton, in the State of Tennessee, and thence, *via* Stevenson, in Jackson county, in the State of Alabama, to the city of Nashville, in Davidson county, in the State of Tennessee, thence, *via* McKenzie, Carroll county, in the State of Tennessee, to and including the terminus in the town of Hickman, on the Mississippi river, in Fulton county, State of Kentucky; being a distance of about three hundred and twenty-one miles of main line, and also and including the line from the town of Wartrace, in Bedford county, State of Tennessee, to the town of Shelbyville, in said Bedford county, State of Tennessee, the distance from said Wartrace to Shelbyville being eight miles; also including the line from the town of Bridgeport, in the County of Jackson, in the State of Alabama, to the town of Jasper, in the county of Marion, in the State of Tennessee, said distance from Bridgeport to Jasper being eleven miles, includ-

ing the terminus and depot in each and all of said towns, making a total length of main line and branches of three hundred and forty miles.

Together with all and singular the appurtenances thereto belonging, and more fully described in said indenture. To have and to hold the said railroad and appurtenances and equipments, estate, property, rights, privileges, franchises, and interests therein conveyed or transferred unto the said parties of the second part, their heirs, successors and assigns, for the equal *pro rata* security and benefit of all such persons or corporations as should become or be from time to time the lawful owners or holders of the above-described bonds, to the aggregate amount of six million eight hundred thousand dollars, or any of them, without preference or priority of any such bonds over any of the others, by reason of priority in the time of issue thereof, or otherwise, and upon the trusts and for the uses and purposes therein declared.

These respondents further say that the said indenture, deed of, trust, or mortgage, was duly registered, and became, and is, in accordance with the laws of Tennessee, as well as the laws of the States of Alabama, Georgia, and Kentucky, a full and effectual conveyance for the uses and purposes therein mentioned, and that a copy thereof is hereto attached, marked "Exhibit No. 2," as a part hereof, to which reference is hereby made.

3. These respondents, further answering, say, that the whole amount of bonds described in the said indenture and deed of trust or mortgage, and intended to be issued, were and have been from time to time issued, sold and disposed of by the said The Nashville, Chattanooga and St. Louis Railway Company, for the uses and purposes therein mentioned, and were negotiated and sold in the city of New York and in Europe, to *bona fide* purchasers

for full value, and the proceeds thereof were used for the purpose of purchasing bonds of the State of Tennessee, to be used in payment to said State for the purchase-money for the Nashville and Northwestern Railroad, which was bought by the Nashville, Chattanooga and St. Louis Railway Company, under judicial proceedings instituted by said State for that purpose, and in pursuance of the laws of the State; and also for the purpose of paying under the laws of the State of Tennessee the indebtedness of the Nashville and Chattanooga Railroad Company for all the bonds loaned to it by said State, and the bonds and coupons of the State of Tennessee so purchased by said Nashville, Chattanooga and St. Louis Railway Company, were bought in open and public market in the city of New York, at the prevailing market rates, and were afterward delivered to and accepted by the State of Tennessee, through its comptroller, in accordance with law, in payment and satisfaction of said debt due to the State from the said Nashville, Chattanooga and St. Louis Railway Company, on account of the purchase aforesaid of the said Nashville and Northwestern Railroad, and on account of internal improvement bonds of said State originally loaned to the Nashville and Chattanooga Railroad Company; fourteen hundred and twenty-five thousand dollars of said bonds, secured by said indenture or mortgage and deed of trust, however, have been deposited in the hands of the comptroller of the State of Tennessee, in accordance with law, as security against an equal amount of the bonds of said Nashville and Chattanooga Railroad Company then outstanding and indorsed by the State, and for which the said State had reserved a lien on said railroad property in its own favor, and one million dollars of said bonds, in accordance with the terms of the said indenture being reserved unissued, for the purpose of being used only in paying off and

discharging an indebtedness of that amount to the government of the United States, as therein recited; and,

These respondents say that the said Charles Burckhardt purchased originally and still holds of said bonds the amount of thirteen thousand dollars, and the respondent, Sophie Mylius von Willer, purchased and still holds of said bonds the amount of fifteen thousand dollars, and the said Charles Diggelman purchased and still holds of said bonds the sum of five thousand dollars, and the said Louise Iselin purchased and still holds of said bonds the sum of fifteen thousand dollars; and that the several respondents whose names are in the list marked "Exhibit No. 1," each purchased and still holds of said bonds the several amounts set opposite their respective names in said list; and

These respondents say that they and other purchasers and holders of said bonds bought the same in good faith and for full value, and in the assurance and belief that the said bonds were lawfully issued for the purpose authorized, and relying upon the representation contained in the certificate of the Comptroller of the State of Tennessee, annexed to each of said bonds, in the words and figures following, to wit: "This is to certify that the lien of the State of Tennessee on the Nashville and Northwestern Railroad, and on the Nashville and Chattanooga Railroad, now merged in the Nashville, Chattanooga and St. Louis Railway, has been paid and satisfied as follows, to wit: By the payment in full to the State of Tennessee for the purchase money of the Nashville and Northwestern Railroad, and by payment in full for the loan of the bonds of the State of Tennessee to the Nashville and Chattanooga Railroad, and by the deposit in my hands, in the manner required in the Act of 1871, chapter

144, section 2, of dollar for dollar of the issue of consolidated bonds, to be held against the outstanding bonds of the Nashville and Chattanooga Railroad Company, endorsed by the State,"—which said certificate was duly signed by the Comptroller of the State of Tennessee, as required by law; and

These respondents, further answering, say and insist, that the said indenture, or deed of trust and mortgage securing said bonds so as aforesaid held by these respondents, has become, and is the first and best lien upon the said railroad and other property described therein, anything in the bill of complaint of said complainant to the contrary notwithstanding.

4. These respondents admit that the General Assembly of the State of Tennessee, on the 11th of February, 1852, passed an Act entitled "an Act to establish a system of Internal Improvements in this State," and various other statutes amendatory and supplementary thereto and in execution thereof, but does not admit that the copies thereof set out in the bill are correct, or that those referred to therein are all that are material to be considered, and denies that the construction thereof claimed by the complainants in said bill is the true and rightful interpretation thereof, and particularly that the same created any debt or obligation from any railroad company, to which they were loaned to the holders of any bonds of the State of Tennessee, loaned to said company by the State, and sold and put in circulation by said company, or that the lien reserved and declared in said laws was reserved and declared in favor of the holders of the bonds of the State, or in anywise inured to them, either by the terms of the said statutes or in virtue of any agreement or contract with the holders of said State bonds, expressed or implied, made by

and between them and said railroad company or the State of Tennessee, or otherwise; and on the contrary thereof, these respondents insist that the said statutes, according to the true meaning thereof, are laws of the State of Tennessee, defining, declaring, and regulating the duties and obligations toward said State alone, of the several railroad companies, to each of which it loaned its bonds, for the uses and purposes therein named, and reserving and securing to the said State, and to it alone, its rights and interests, as against said railroad companies, in consequence of the loan to each thereof of any of its own bonds; and the only contract to which the holders of the bonds of the State of Tennessee are parties, or in which they have any legal, or equitable or beneficial interest, is directly with the State, and is contained only in the bonds themselves, whereby they agreed for the payment of the interest and principal, as therein stipulated, to look alone to the faith and credit of the State, thereby pledged for the same.

And these respondents further say, as a matter of fact, that all the bonds of the State of Tennessee loaned to the said railroad companies under said acts, were sold in the market as straight Tennessee State bonds; that is to say, as other bonds of the State of Tennesssee, issued upon the mere credit of the State and without other security, and on which the State was liable as principal, and as distinguished from bonds of railroad companies, indorsed or guaranteed by the State, and on which both the railroad company and the State were bound, the former as principal, the latter as surety; and this respondent says that, in consequence of this difference, and in virtue of said bonds being what were known in the market by the public as straight Tennessee bonds, the said bonds sold before the war, commanded a premium in the market, and were sold at or above

par, while bonds of other descriptions, on which the railroad companies were bound as principals and the State of Tennessee as surety, and secured by a mortgage lien upon the railroad property, directly to the holders of the same, could not be sold except at a very considerable discount; and this respondent insists that it was to meet this condition of the market, which was well known, and to avoid and prevent the loss occasioned by this distrust of bonds, on which railroad companies were bound as principals, and the State merely as surety, that the legislation introduced by the acts of January 15 and February 11, 1852, was shaped so that the bonds of the State to be issued under it should rest alone, without other security, upon the public confidence in the ability and willingness of the people and government of the State of Tennessee to meet and pay at maturity all their obligations and debts, as, at that time, they always had done, and as at that time it was believed they always would continue to do; and all the provisions in said legislation looking to security for the payments to be made by the railroad companies were arrangements to which the State and the railroad companies alone were parties, and for the sole indemnity of the State against loss on account of its liability for this interest and principal of its bonds, issued and loaned to the said several companies.

And these respondents say that it was not in the contemplation of the parties, at the time of the passage of said internal improvement acts of 1851, 1852, nor at the several times when the bonds of the State were issued, in pursuance thereof, to the several railroad companies mentioned therein, nor when any of said bonds were sold by said railroad companies, that the State of Tennessee would ever fail promptly and punctually to pay the current interest on said bonds; and that, consequently,

it is inadmissible now to construe said acts as if they contained provisions looking to such contingency, and providing against it, more especially as if such construction had been put on said laws at the time of said negotiation, it would have been evidence of such distrust in the good faith or ability of the State to meet its obligations as would materially have affected the market value of said bonds, if not prevented their sale; and, on the contrary thereof, this respondent says that so little room was there for such a construction of these acts, that express provision was therein made, in the 5th section of the act of February 11, 1852, whereby it was made the duty of the comptroller, and he was thereby authorized, "upon his warrant, to draw from the treasury any sum of money necessary to meet the interest on such bonds, as may not be provided for by the company, as provided for in this act; and the comptroller shall report thereof to the General Assembly from time to time."

And these respondents further say that whatever were or may be supposed to have been the rights of the holders of the State bonds, issued under said act of February 11, 1852, after sale thereof by the railroad companies, to which they had been loaned and issued, they were taken subject to the provisions of the 12th section of said act, whereby it was enacted "that the State of Tennessee expressly reserves the right to enact, by the legislature, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to insure the State against any loss, in consequence of the issuance of bonds under the provisions of this act, but in such manner as not to impair the vested rights of the stockholders of the companies."

And that all the subsequent acts, amendatory of said act of February 11, 1852, and suplementary thereto, particularly the said acts of 1869, 1870, for

the retirement of the State debt, and for the sale of delinquent railroads, and all acts and transactions under them, whereby settlements were effected between the State and said several railroad companies, and the indebtedness of the latter, arising in consequence of the loan to them of the bonds of the State was liquidated and satisfied, and the lien to secure the same discharged, were strictly and fairly in execution of the intentions and purposes of the original act, and of the power reserved to the State in the 12th section thereof.

And these respondents further say that said act of February 11, 1852, not only recognizes the lien thereby reserved and created, as belonging to the State in law, but also in equity, for its own sole and exclusive benefit, to be dealt with, enforced, or discharged, according to its own discretion, and with a view only to its own interests, as its own property, security, and indemnity; and also that the plan provided in said act for the gradual but ultimate payment and extinction of the obligations of the railroad companies under the same, in making provisions for a sinking fund, according to the terms of the 7th section thereof, explicitly admitted the principle of a payment by said railroad companies, on account thereof, of any bonds of the State, whether the identical ones issued to the company or not, and guaranteed to each of said railroad companies, as a right, the opportunity to pay its whole indebtedness, arising under said act, in any bonds of the State of which it might become possessed, and was merely a provision for effectuating the just and lawful exchange of one debt for another, upon the basis of mutual rights of set-off.

5. These respondents further say that immediately after the proclamation of peace, in the spring of 1865, the General Assembly of the State of Tennessee, then in session, addressed itself to the sub-

ject of the condition of the railroads of the State and of the public debt. The Louisville and Nashville Railroad Company was, at that time, the strongest corporation, financially, owning or operating any railroad in Tennessee, for the reasons, that the principal part of its lines were situated in the State of Kentucky, and had suffered less than Tennessee roads from injury inflicted by reason of military operations. Accordingly, the first step taken was to seek a settlement with that company for the liquidation and payment of its indebtedness to the State, on account of bonds issued to it to aid in the construction of its main stem from the State line to Nashville.

These respondents say that the discharge and satisfaction of the debt, due from the Louisville and Nashville Railroad Company to the State of Tennessee, and a lien reserved under said statutes for the security of the same, was effected in the manner following, to-wit: On May 5, 1865, the General Assembly of the State, by joint resolution, appointed the comptroller, secretary of state, attorney-general, and commissioner of public works a board to make a settlement with the Louisville and Nashville Railroad Company, and if a satisfactory settlement could not be obtained, the governor was authorized to have instituted such legal proceedings as might be necessary to protect the interests of the State. On the 18th of November, 1865, said commissioners reported to the legislature that they had effected a settlement; that the bonds loaned said company by the State amounted to $560,500, and the overdue interest thereon to $147,131.25; that the company had proposed to pay the entire principal in straight six per cent. coupon bonds of the State and the interest in coupon bonds of the State then due. The commissioners say: "Believing it to be manifestly for the interest of the State to call in this

large installment of its indebtedness, and believing, moreover, that the company had a right under the law regulating the sinking fund to pay off its entire indebtedness of the bonds of the State, your commissioners accepted the proposal, and executed to the company a receipt dated November 17, 1865, for $707,631,25 in bonds and coupons of the State, being the total indebtedness of said company to the State of Tennessee on account of the bonds of the State received in aid of the construction of said road and the bridge across the Cumberland river." Copies of said resolution and report are herewith filed as Exhibits Nos. 3 and 4 respectively. And these respondents say that the said railroad company actually paid and delivered said bonds and coupons as in said receipt is recited.

6. These respondents further say that the facts of this settlement were public and notorious, and were well known at the time to the public at large, to the holders of Tennessee State bonds, and, as these respondents aver and charge, to the complainant and those with whom they are associated and acting in the prosecution of this and similar suits; and that it was equally well known that it was made under a claim of right and in pursuance of an interpretation of the statutes of 1851, 1852, and of the subsequent legislation, which treated the lien upon the railroads reserved thereby as belonging to the State, not in trust for the holders of its bonds, but in its own right, to be dealt with in its own discretion and with sole regard to its own interests; and that consequently, although at the time this settlement was made in 1865, the State was in default for non-payment of the interest on its bonds from July, 1861, no protest or complaint was ever made by any holder of State bonds against the mode of dealing on its part with the said roads, nor against this settlement with the Louisville and Nashville Railroad Company, until the filing of this bill.

7. These respondents further say that the bonds and coupons paid by the Louisville and Nashville Railroad Company to the State of Tennessee in the said settlement, were not the identical bonds and coupons originally advanced and loaned to said company and by it negotiated and sold, but that the same, in part at least, were other bonds and coupons of the State of Tennessee, of like character thereto; that by the terms of the seventh section of the act of February 11, 1852, the said company was required, at the end of five years after completion of its road, to set apart one per centum per annum upon the amount of bonds issued to it, and use the same in the purchase of any bonds of the State of Tennessee, paying said bonds so purchased into the treasury of the State after assigning them to the governor, taking his receipt therefor, and which bonds, it was thereby declared, so paid in, as between the State and said company should be a credit on the bonds issued to the company; and said bonds, so paid in, and the interest accruing thereon from time to time, should be held and used by the State as a sinking fund for the payment of the bonds issued to the company, but that should said company repurchase any of the bonds issued to it under the provisions of said act, they should be a credit as aforesaid and canceled; and thereby, as this respondent insists, there accrued to the company, in addition to the obligation to pay said one per cent. per annum, the right at its election, with the concurrence and consent of the State, to pay any additional amount of bonds of the State, of any description, into said sinking fund with like effect.

And these respondents further say, that by an act of the General Assembly of the State of Tennessee, passed March 20, 1860, entitled "an act to provide for the equalization and investment of the

sinking fund in the bonds issued to or indorsed for railroads in this State," it was provided that the money or bonds paid in to the sinking fund by the 1st day of January, 1860, with the interest thereon, should be passed directly to the credit of the parties having so paid the same, and be a release to said party for that amount of the debt due by them to the State of Tennessee, all bonds so paid in being canceled; and that after said date of January 1, 1860, the companies who had received State bonds, should be required to pay two and one-half per centum per annum on the amount of such bonds, as a sinking fund, which amount might, at the election of the companies, be paid in cash, or in the like character of bonds that might have been issued to them respectively; if paid in cash, the same to be invested immediately in bonds of the State, to be canceled, and to be of the same character as those issued to the said company making the payment; and it was further provided therein, that the sinking fund, when paid, in all cases, shall be passed directly to the credit of the said company or corporation, and be a release to said company or corporation from that amount due by them to the State, and that, thereafter, each railroad company should provide the interest semi-annually as therein provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued to said company by the State, as theretofore provided: and thereby there was recognized in said companies the right to pay, in manner aforesaid, in any bonds of the State, the entire amount due from it to the State on account of bonds originally issued to it by the State; and it was in the exercise of this right, that the Louisville and Nashville Railroad Company made its payment as aforesaid, which was accepted by the State in satisfaction of the debt due from it to the State, on ac-

count of the bonds issued to it, and in discharge of the lien reserved by the State as its security therefor.

8. These respondents further say, that, at the time said settlement was made, the circumstances of the situation were such as to make it most advantageous to the State of Tennessee, and beneficial to its credit and its creditors. The war had but recently prior thereto definitely closed.

During the period of actual military operations, the railroads had been the prize of contending armies, as instruments of offense and defense. In the course of the struggle, they had been stripped of their equipment, and parts of them destroyed and repaired, as circumstances permitted, to fit them for military use, but so that when they were finally restored, on or about August, 1865, to their owners, they were destitute of rolling stock, cars, machinery, shops and tools, and almost every thing needed for an equipment, nearly everything of that description then in actual use upon the roads being the property of the United States, furnished and employed for its military uses. This they were permitted to purchase and did so in pursuance of executive orders issued by the President of the United States in September and October of that year, but being unable to pay cash, gave their obligations for the purchase money payable in installments and bearing interest. The roads themselves, their road beds, track, trestle-work, bridges, and permanent work of every description, were, to a greater or less extent, out of repair, in need of restoration, in some instances in a state of actual dilapidation. Business of every kind had been suspended by the war, except military transportation, and now, that employment ceased with the cessation of hostilities, but the fruits of peace, in the revival of industry and trade, could only come with

the lapse of time, and the gradual accommodation of the community to the new order of things. The general result was that the railroads required large sums of money to put them in a condition to earn an income, and, after that, would have to wait the slow operation of general causes upon the social condition of the people, before any revival of trade would renew their sources of revenue. In the meantime, a large arrearage of debt, for unpaid interest, had accumulated by reason of the default, during the whole period from July, 1861, both of the State and the railroad companies, in consequence of which the State securities had become discredited in the markets of the world, and their holders, as seen by the quotations in the stock markets at New York, were willing to dispose of them at a large discount. To buy them from those willing to sell, at their own offers, was no injustice to the bondholders; to pay them into the sinking fund, as a credit on the railroad debt, would be a relief to the companies, and would diminish the burden of the State, and reduce the amount of its obligations, so as probably to bring the State debt within the limits which would make it tolerable, and so diminish the motive and temptation to repudiate it, while the demand thus created for depreciated securities would naturally, as in fact it did, raise the prices in the market of those held by others who did not choose to sell; so that the transaction was well calculated, without injury or loss to any one, to prove beneficial to all the important public and private interests affected.

9. These respondents further say, that about the time said settlement was made with the Louisville and Nashville Railroad Company, on November 8, 1865, the General Assembly of the State of Tennessee, by joint resolution of that date, appointed a joint committee to examine into the condition of

the sinking fund, and ascertain what railroads had paid, and what amount, and if they had due credit, and also that they be authorized to cancel all bonds of the State that had been paid in by railroads; and these respondents say, that while they are ignorant of the exact amount of State bonds that, at that time, had been paid in on account of the sinking fund by the railroads, and for which they were entitled to credit on account of their indebtedness to the State for its bonds loaned to them under the general internal improvement acts, yet, that it amounted to a considerable sum, and that said bonds had been paid in, as by law the railroad companies had the right to do, whether they were the identical bonds loaned to the company paying them into the State treasury, or other State bonds, issued to other railroads, or for the general purposes of the State; and these respondents say, that no other mode of reducing the indebtedness of the State to its bondholders, or of the railroad companies to the State, was in fact practicable, for the reason that no difference was made in the stock market in Tennessee State bonds, as to price or description, on account of having been issued to one railroad company and not another, or between those issued to railroad companies under the internal improvement acts, and those issued by the State for other purposes; nor could any purchaser or seller of bonds have knowledge, without carefully tracing their numbers in the books of the secretary of State, on what account and to whom they were originally issued, so that no railroad company could practically go into the market and purchase exclusively State bonds which had been originally loaned to it, under the internal improvement acts, and it was a fact and practice well known to the complainants, as to all the holders of State bonds, that they were from

time to time bought in the market for the purpose, and actually paid into the sinking fund, without discrimination, as stated hereinbefore, accepted by the State as a payment on account of the debt due from the railroad company so paying them into the treasury, and credited to it in account, and treated, as between such company and the State, as paid and canceled bonds.

10. These respondents further say that, at or about the date of said settlement between the Louisville and Nashville Railroad Company and the State of Tennessee, to wit, on the 23d day of November, 1865, the General Assembly of said State passed an act entitled an act to amend an act entitled, "an act to establish a system of internal improvement in the State, passed the 11th of February, 1852," whereby the governor of the State was authorized and instructed to issue the six per cent. coupon bonds of the State, similar in character in every respect to the bonds issued under said act of 1852, and maturing at the same time, to an amount sufficient to pay off all the bonds and interest past due, as well as that to fall due January 1, 1866, or on any bonds that might fall due during the year 1867, issued or indorsed by the State prior to the 6th day of May, 1861, said bonds to be dated on the 1st day of January, 1866, and payable on the 1st day of January, 1892, to be sold and negotiated at not less than par or exchanged for the interest coupon bonds thereby provided to be paid, estimating each at their par value. And it was further provided in said act, that the State should have the liens upon each of the roads, their franchises, and property, for the prompt and faithful payment of the principal and interest of the bonds thereby authorized to be issued, to pay the interest on the bonds said company should have paid interest on as it had under the said act of February 11, 1852,

for the bonds issued under that law; and the said several railroad companies receiving aid under this act should pay the interest on said bonds, as it matured, in the same manner and under the same rules, regulations and restrictions as they were then required to pay on the bonds issued or indorsed for them under the said act of February 11, 1852, commencing the payment of said interest on the 15th day of June, 1866, the amount of interest due on January 1, 1866, by any railroad company to the State on bonds issued to or indorsed for said company, being charged up to said company on the same terms and conditions of the original loan under the said act of February 11, 1852.

It was further provided by the said act of November 23, 1865, that the obligations on the part of the railroad companies to pay into the sinking fund two and one-half per cent. per annum on the amount of their indebtedness to the State, be suspended until January 1, 1867, and said companies relieved from the payment of sinking fund then past due, and that during the year 1867 each of said companies should be required to pay four per cent. on the amount of its indebtedness to the State, to be paid in any bonds of the State of a like character to those issued or indorsed for said company, with the coupons on the same that have not matured, semi-annually on the first of April and October, and a like amount every year thereafter until the whole of their indebtedness is discharged.

And these respondents say that every holder of bonds of the State of Tennessee, originally issued under the internal improvement laws, including the complainant, if at that time he was holder of any such, accepted the provisions of this act of November 23, 1865, surrendering to the State the overdue and unpaid coupons of said bonds, which

had matured from July 1, 1861, to January 1, 1866, and receiving in exchange therefor the said State bonds, authorized thereby, and subject to all the terms and conditions of said act, affecting either said new bonds or the original bonds held by them, and thereby admitted and consented to the expressed right reserved to the railroad companies to pay their indebtedness to the State, on account of said bonds originally loaned to them, in any bonds of the State of like character.

11. These respondents further say, that after the proceedings and legislation of the State of Tennessee, hereinbefore set out, including said settlement with the Louisville and Nashville Railroad Company of November 17, 1865, and the passage of said act of November 23, 1865, the market price of the bonds of the State of Tennessee, in the city of New York, rose from about fifty cents on the dollar in the month of March in that year to ninety-two cents on the dollar in the month of December in the same year.

12. These respondents further say, that at its same session, on the 18th day of January, 1866, the General Assembly of the State of Tennessee passed another act to amend the said act of February 11, 1852, wherein it is recited that the Memphis and Ohio Railroad, the Memphis, Clarksville and Louisville Railroad, the Edgefield and Kentucky Railroad, the Manchester and McMinnville Railroad, the Nashville and Northwestern Railroad, the Mississippi and Tennessee Railroad, the East Tennessee and Virginia Railroad, the Knoxville and Kentucky Railroad, the Winchester and Alabama Railroad, and the East Tennessee and Georgia Railroad were all out of repair, the bridges and trestles on said roads had been destroyed, and the companies were unable to put them in running order, and the State had a large interest in said roads, and it was to the

interest of the State and the people of the State that the said roads should remain under their control, and that they should be put in running order. It was therefore thereby enacted that the governor of the State be authorized and instructed to issue the bonds of the State, bearing six per cent. interest, with coupons attached, similar in every respect to the bonds issued under the act intended to be amended, viz., the act of February 11, 1852, and maturing as thereinafter provided, to the said named railroad companies, or receivers of such roads, appointed by the governor under the laws of the State, in the amounts therein named, amounting in the aggregate to the sum of $3,283,000, besides $125,000 to the Nashville and Chattanooga Railroad Company, for the completion of the branch road from Bridgeport, Alabama, to Jasper, Tennessee, and $75,000 to the Southern Central Railroad, for the purpose of assisting in paying for their bridge.

And it was further provided in said act, that each of the said railroad companies, to which relief was granted by said act, should pay to the treasurer of State, as a sinking fund, four per cent of the amount of its indebtedness under said act, as also the interest on said bonds; the sinking fund to commence on the first of January, 1867, as a fund for the payment of said bonds; and the State thereby reserved a lien on all the profits of said roads, for the money thereby advanced for the repairing of the same, which the State should have the right to enforce, if the said companies should fail to pay the four per cent, and interest, as provided by the said act, and which should be enforced as provided by law, in the internal improvement act of the State, and said lien, thus reserved, was thereby also declared to be cumulative of, and in addition to, the lien declared in the act of 1852, which said act it was intended to amend,

which lien—that is, under said last mentioned act —was thereby declared to extend to, and cover, the money or bonds to be advanced to said roads under said act.

13. These respondents further say, that in pursuance of the same policy, to extend and enlarge the aid of the State to its railroads, in order to restore and repair them, the General Assembly of the State passed additional acts, to which reference is here made, viz:

An act to incorporate the Tennessee and Pacific Railroad Company, and for other purposes, passed May 24, 1866.

An act to amend an act, passed January 18, 1866, entitled, "An act to establish a system of internal improvements," passed February 11, 1852.

Under which two acts, bonds of the State were directed to be loaned to the amount of three millions and ten thousand dollars ($3,010,000), to the railroad companies therein named, upon the same conditions prescribed in the internal improvement act of 1852 and its amendments.

And by an act, passed February 18, 1867, the act of November 23, 1865, above referred to, was amended so as to postpone the commencement of the payment by the railroad companies, of the four per cent sinking fund, from the year 1867 until the year 1870.

14. These respondents further say, that many of the railroad companies were unable to provide the means to meet the interest falling due on the 1st of July, 1867, which by law they were bound to provide, and failed to do so, to the extent of nearly $800,000, but that the State nevertheless paid the whole amount of interest falling due on that date on its bonds to the holders thereof; and thereafter, on the 7th day of December, 1867, the General Assembly passed an act entitled "an act to amend the

internal improvement laws of the State, passed February 11, 1852," and thereby authorized the loan in a like manner and under the same conditions imposed by the internal improvement laws of the State, to the several railroad companies therein named, of State bonds, to the aggregate amount of three million seven hundred thousand dollars ($3,700,000), besides an additional sum of $5,000 per mile to the Tennessee and Pacific Railroad Company; and by section 15 of said act it was "Provided, that if the several railroad companies or either of them to whom the bonds of the State has been loaned by this act or former acts, shall fail for two consecutive years, to pay the interest that may accrue upon the bonds loaned to them severally, then, and in that case, the governor, secretary of state, and comptroller may, at their discretion, sell said railroad track, railing, rolling stock, etc., upon such terms and conditions as they may deem best to secure the interest of the State, and shall retain of the proceeds of said sale, the amounts loaned to said companies and the interest due on the same, with expenses of said sale," and also, on the 26th of January, 1869, passed an act to amend the internal improvement act of 1852, by making it the duty of each railroad company, to whom had been issued the bonds of the State, at least fifteen days before the interest becomes due, from time to time, to pay the amount of such interest, including exchange and necessary commissions, to the Comptroller of the State, instead of the Bank of Tennessee, as originally provided in the acts of 1851–1852.

15. These respondents further say, that on February 24, 1870, the General Assembly of Tennessee passed an act to fund the floating debt of the State, and thereby made provision for funding the interest on the public debt of the State then due, and

that which might become due on or before the first day of January, 1874, in new bonds of the State, with coupons attached, redeemable by the State in not less than five nor more than twenty years, at the pleasure of the State, bearing interest at the rate of six per cent. payable semi-annually; and it was thereby also enacted that the amount of interest then due, or that might become due by the 1st day of January, 1872, to the State on bonds issued to railroad companies, might be paid by said railroad companies in the bonds of the State or past due coupons, as the said companies might elect, and the Comptroller of the State was authorized and instructed to receive said bonds or coupons in payment of the said interest due to the State by said railroad companies, provided, that no railroad company in the State should be entitled to the provisions of that section, unless they had paid or should pay, in cash, fifty per cent. of the amount due and owing to the State by such railroad companies on the first day of July, 1869.

And these respondents say that on March 17, 1873, the General Assembly of Tennessee passed an act entitled "an act to fund the past due bonds and coupons of the State, and to sustain the credit thereof," and thereby enacted that all the outstanding legally issued bonds of the State of Tennessee, due, or to become due before the first day of January, 1874, as well as all past due coupons, and coupons maturing on or before the first day of January, 1874, might be funded in six per cent. coupon bonds of the State of Tennessee, to be styled "the new series of funding bonds," redeemable, at the option of the State, after July 1, 1884, and due and payable on the first of July, 1914, and bearing six per cent. interest, evidenced by coupons attached, payable semi-annually, on the first days of January and July in each and every year, from

and including the first day of July, 1874, to the maturity of the bonds; and it was thereby further enacted, that the faith, honor, and credit of the State of Tennessee was thereby pledged for the payment of said bonds at maturity, and providing a sinking fund for that purpose, and for the prompt payment of interest on said bonds, as well as the interest on the registered bonds thereinafter provided for, commencing with the interest to fall due the first day of July, 1874; and it was thereby made the duty of the Treasurer of the State to set apart for that exclusive purpose so much of the revenues as might be necessary to pay the interest on said bonds, commencing with the interest that falls due the first day of July, 1874; and, by the ninth section of said act, it was further enacted, that no coupons of bonds then due should be paid, other than those coupons falling due on and after the first day of July, 1874, and only such coupons of said bonds maturing after that time as should be presented to the Comptroller, who was required to examine the same, and if found to have been issued according to law, should be registered, and the registration properly indicated thereon by him and the secretary of state. It was also provided by the fifth section thereof, that the said act should not affect the liabilities of any railroad, turnpike, or other corporation or person, for or on account of the bonds issued or loaned or indorsed by the State for internal improvements or other purposes, nor any lien in favor of the State as against purchasers of delinquent railroads.

And these respondents say that all the holders of the bonds of the State, including the complainant, if he then held any such, or, if not, his predecessors in the ownership of any he may now hold, and those associated and acting with him in the prosecution of this and similar suits, accepted the provisions of

these acts, and funded their overdue coupons, and received payment of current accruing interest after January 1, 1874, to January 1, 1876, in accordance with the terms thereof, and particularly that they registered their bonds, in compliance with the provisions of the ninth section of said act, and thereby assented to and adopted all the provisions of said act.

16. These respondents further say that in the meantime, on the 10th day of November, 1868, the governor of the State had informed the General Assembly that six railroads in the hands of receivers were at that time indebted to the State, on interest account due July 1, 1868, one million one hundred and twenty thousand nine hundred and ninety-six dollars and eighty-six cents, and stated that he would have seized two other roads for failure to pay the July interest of that year, and placed them in the hands of receivers, but that he had learned by experience that to do so would only entail increased burdens upon the State treasury, and expressed the opinion that the interest of these roads, as well as that of the State, required that they should be sold, and the proceeds thereof applied to the reduction of the State debt. In the same message, he said:

"Leading gentlemen, connected with important railroads largely indebted to the State, are asking for authority to issue second mortgage bonds, with a view of exchanging them for State bonds. Thus pnrchasing State bonds by the avails of these second mortgage bonds, the debt now due by the State would in like amount be transferred to these railroad companies, and so the State would be relieved of a burden of several million of dollars of debt now resting upon it. I regard this proposition with approval, and advise its adoption by the Assembly. The payment of large debts now due from the roads alluded to, and the sale of the roads already in the

hands of receivers, would reduce the State liabilities at least one-third."

And these respondents say that at that session, in pursuance of the policy thus recommended, the General Assembly passed, on February 25, 1869, the act entitled "an act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," and on the 20th day of January, 1870, the act entitled "an act for the payment of the State debt," and on the 1st day of July, 1870, the act entitled "an act authorizing the sale and transfer of the interest of the State in delinquent railroad companies," and on the 8th day of July, 1870, the act entitled "an act appointing commissioners under certain circumstances to lease delinquent railroads," and on the 21st day of December, 1870, the act entitled "an act to amend the act of 1870, ch. 79, for the sale of interest of the State in delinquent railroad companies, passed July 1, 1870," and on the 13th day of December, 1871, the act entitled "an act to further enable railroad companies to pay their debts to the State and complete the construction of their roads."

And these respondents say, that at the session of the General Assembly in 1871, the governor, in his message to that body, stated that under said act of February 25, 1869, as amended by the Act of January 20, 1870, chap. 44, over eight million of dollars in the bonds of the State had been retired and canceled; that other roads had purchased and were then purchasing bonds with which to cancel their liabilities to the State under the said acts; and in order to prevent further delay on the part of solvent roads that had not retired their indebtedness to the State under said act, recommended that the act be either repealed, to take effect at some future time not remote, or that its provisions be so amended as that the roads be re-

quired to pay all accrued interest as well as the sinking fund not theretofore paid in. In the same document, the Governor also stated that but three of the delinquent railroads remained unsold, and added: "It will be a gratifying result when the State is entirely divorced from the railroad system. And, although the sales will not realize all that was desired, and leaves a large debt to be provided for, yet the internal improvement system of Tennessee has added millions to her wealth and diffused such energy and enterprise into every class of society, that no intelligent man can regret the policy which inaugurated the system, notwithstanding a large amount of appropriations made since the war have been improperly expended."

17. These respondents further say, that the several railroad companies to whom loans of internal improvement bonds had been made and the State of Tennessee dealt together under the said acts of February 25, 1869, and of January 20, 1870, according to the terms thereof, the various railroad companies who were able to do so, and who were on that account called solvent, purchasing in the open market, at the market price, bonds of the State of Tennessee, without discrimination as to their description, or on what account, or to whom issued, the only practicable mode in which they could make purchases of the public debt of the State, and paying them to the State in satisfaction of the indebtedness of such railroad companies to the State on account of its advances of its own bonds to them, and in discharge of the lien reserved therefor to the State under the Internal Improvement Law of 1852 and the amendments thereto; and in order to raise the means so to do, the said railroad companies issued their own bonds, secured by mortgages on their railroad property as a first lien thereon, in substitution for that of the State, and declared by law and the certificate

of the State to be first mortgage bonds, and the same were sold in the markets of this country and of Europe, on the faith thereof, to innocent purchasers for value, to the amount of many millions of dollars, now outstanding; and that those railroads known as delinquent railroads, the corporations owning which were not able thus to liquidate their indebtedness to the State, were sold by the authority of the State, by virtue of judicial decrees, duly rendered in proceedings instituted and prosecuted by the State under and according to the provisions of the Act of December 20, 1870, to which all parties in interest, including the holders of State Internal Improvement bonds, were parties and bound thereby; and the purchasers thereof paid for the same, as by said act and decree they were authorized to do, in any bonds of the State.

And the respondents say that by virtue of said dealings and transactions, and in consequence thereof, the result, in regard to the reduction of the public debt reached, was as follows: The total bonded debt of the State, about the first of January, 1870, was about forty millions of dollars. The payments on account thereof, for and on behalf of railroad companies to whom internal improvement bonds were loaned, made into the treasury of the State, in bonds and coupons overdue, amount to twenty-one million four hundred and eighty-five thousand dollars, leaving the unpaid public debt of the State amounting to about nineteen million five hundred and fourteen thousand dollars. The account between the State and the two descriptions of railroads is as follows:

First. Defaulting railroads sold:

Bonds issued	$14,628,000 00
Int. funded, 1866	1,122,306 00
Int. unpaid, July, 1870	3,331,163 12
U. S. claims assumed	511,560 00
Total	$19,593,029 12
Amount realized by sale	6,698,000 00
Loss to State	$12,895,029 12

Second. Roads which have settled their indebtedness:

Bonds issued	$12,742,000 00
Int. funded, January, 1866,	1,850,768 00
Sinking fund paid	493,306 00
Unaccounted for	1,255,700 00

For a more particular account thereof, reference is hereby made to the statements herewith filed and marked Exhibit No. 5.

18. And these respondents further say that during the whole period of these transactions, from and including the settlement between the State and the Louisville and Nashville Railroad Company, beginning in May, 1865, and during the whole progress of this legislation, and of the liquidation, arrangements, and settlements authorized and required by it, and of the dealing between the railroad companies and the State, and of the railroad companies in borrowing money on the security of mortgages on their property, on the faith that all prior liens on account of the loans by the State of internal improvement bonds had been thereby removed and discharged or transferred by operation of law, to bonds issued by the railroad companies

in substitution therefor, the holders of the bonds of the State of Tennessee, in general, had knowledge of all that was taking place; the facts themselves were public, historical, and notorious, and the holders of Tennessee State Bonds, at an early stage in this series of transactions, formed a voluntary organization, represented by a committee, for consultation and co-operation in matters of common interest, and kept themselves well advised of each step in the history of the business; and on or about May, 1870, said bondholders, through their committee, of which J. J. Donaldson, Esq., was chairman, obtained a legal opinion from Hon. Henry E. Davies and Noah Davis, eminent counsel of the city of New York, affirming that they were in equity, beneficial owners of a lien under the act of 1852, reserved nominally to the State, upon each railroad, for the specific payment of the identical bonds issued to that railroad company, by virtue of a contract, protected by the Constitution of the United States; which opinion was printed in pamphlet form and generally circulated among the holders of the Tennessee State bonds, but not otherwise. And these respondents say, that he is informed, and believes, and so avers, that the said or a similar organization of Tennessee State bond holders, has been kept up ever since, and that the present suit, and other similar suits, now pending are prosecuted in the name of the complainants, by a committee of such organization.

And these respondents say that at no time did the said holders of Tennessee State bonds, or any one of them, including the complainant or those associated and acting with him in the prosecution of this and similar suits, ever make any demand upon any railroad company for the payment of any interest on the said bonds, or receive from any railroad company payment of any

coupon, or notify or inform, either directly or indirectly, any railroad company that it was claimed that any such liability, right, or lien existed, or make any objection to any of the acts of the State of Tennessee, inconsistent therewith, or object to the passage thereof, or oppose any payment, settlement, and liquidation, by any railroad company, of its indebtedness to the State, or make public, in any way, their claim as now asserted in this bill of complaint.

On the contrary thereof, these respondents say that they not only acquiesced in all the foregoing acts and transactions, by their tacit approval and consent, but that they actively advised and urged in individual cases, including the present complainant, or some one or more of those with whom he is and has been acting, the consummation of these arrangements, as beneficial to the holders of State bonds, and by frequent and public communications, to and with the authorities of the State, treated and dealt with it as their only debtor, and gave it to be understood that they looked to no other, and had no other to whom to look.

And these respondents say that on the 16th day of January, 1878, there was held, in the city of New York, a meeting of holders of Tennessee State bonds, the call for which was signed by the complainant, and others with whom he was then acting, and with whom he is still associated, and who, jointly with him, are prosecuting this and similar suits—namely, Eugene Kelly, Peter Geddes, John T. Terry, and others—and at which they were present and participating, and at which the following preamble and resolutions were adopted, viz.:

"*Whereas*, On the 8th March, 1877, at a meeting between a committee of five members of the Tennessee legislature (of which Col. John H. Savage was chairman) and a committee of arbitration (of which

Mr. George S. Coe was chairman), to whom had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with a view of ascertaining and determining what a fair and equitable adjustment of it would be; and,

"*Whereas*, At the conclusion of the conference between the committee of the Tennessee legislature and the committee of arbiters, the committee of arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest, the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State; and,

"*Whereas*, The session of the legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was no time to enact a law to give it effect; and,

"*Whereas*, It was very generally understood that an extra session of the legislature would be convened, to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the committee of arbitration, and to enact a law to fully carry it out, the holders of a very large amount of bonds of Tennessee did make and send to the governor propositions of compromise on the terms of said award, and the governor did thereafter convene the legislature in extra session, to consider said proposition; and,

"*Whereas*, During the sitting of the legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the committee of the legislature and the committee of arbitration, and awarded by the latter committee, and agreed to by

the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and

"*Whereas*, The bondholders of Tennessee had neither an agent nor other person to represent them before the legislature, but confided in the legislature, and fully expected that the senators and resentatives of the people of Tennessee would ratify and affirm the award of the distinguished and disinterested gentlemen who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

"*Resolved*, That efforts made by any persons who purported to represent the bond holders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville, that a settlement could be effected with the bond holders upon a lower basis than that proposed by the committee of arbitrators, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

"*Resolved*, That while we deplore the attitude assumed by the legislature, while assembled at Nashville, in December, toward the bondholders, we believe that it resulted from the influence of unwarrantable interference of other parties than real bondholders, or their representatives.

"*Resolved*, That we have an abiding belief that the people of the great State of Tennessee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them, the effect of which will be to paralyze the prosperity of the State, subvert its best interests, and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

"*Resolved*, That the people of Tennessee be urged to adopt such legislation as will uphold the honor of the State, and evince proper regard for the high integrity which has hitherto characterized her citizens.

"*Resolved*, That a committee of five be appointed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be chairman—to take such action as, in their judgment, may be for the interest of the bondholders; but with the understanding that no settlement less favorable than the award of the committee of arbitration be accepted."

And these respondents say that on the 11th day of December, 1877, the complainant, C. Amory Stevens, had addressed, by telegraph, from New York, to the governor of Tennessee, a communication, which was laid before the General Assembly, then in session, as follows:

NEW YORK, Dec. 11, 1877.

"GOVERNOR JAS. D. PORTER:

"I am a large holder of Tennessee bonds, which have been held for years strictly for investment account. I was a signer of the former petition, sent you through the committee of arbitration; and while I would prefer to have that proposition accepted, yet, if it would require a revenue bill that is deemed by the legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I propose to take fifty cents on the dollar. I think this dispatch represents the sentiments of most of the investment holders. They recognize the

embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the legislature, through your excellency, to reciprocate this feeling, and make a settlement without further delay.

"Please submit this to the legislature for its action.

"THE ESTATE OF CALVIN STEVENS,
"C. AMORY STEVENS, *Trustee.*"

And these respondents say that the public debt of the State of Tennessee, which was the subject of these communications and propositions, amounted at that time, as reported to the General Assembly by the Governor, in the same message which transmitted the proposition made through the committee of arbitration, to twenty-three millions two hundred and twelve thousand six hundred and six dollars, on the first day of January, 1878, and which consisted chiefly of bonds issued under the Internal Improvement Acts of 1851, 1852, and the amendments thereto, and those issued for past due interest, and known as funding bonds, constituted what remained of the outstanding bonds of the State, after the payment made by the railroad companies in satisfaction of their indebtedness to the State under the internal improvement acts, and the sale of the delinquent roads and the payment of the purchase-money thereof in the bonds of the State, as provided in the acts of 1869, 1870.

And these respondents say and insist that the construction of the internal improvements act, thus practically established by the subsequent legislation and dealing of the public authorities of the State, with the railroad companies and with its creditors and universally acquiesced in, has thereby acquired the force of law, and ought not now to be questioned, much less disturbed, to the injury and loss of many

innocent persons in this country and in Europe, who have invested large sums of money on the faith and credit thereof; and these respondents say that the complainant and those with whom he is associated and acting in this behalf, have, by their acquiescence in this course of dealing, invited and encouraged others to repose confidence and trust in the same, and ought not now to be permitted, in equity, to question the validity of transactions to which they have thus consented, and that whatever rights they may originally have had, as holders of State bonds adverse thereto, have been lost, by their own laches, acquiescence, and neglect to urge them, when they ought, if they had intended to insist upon them, and the claim now made so to do is, consequently, stale and inequitable.

19. And these respondents, further answering, say they deny all charges and allegation of fraud and bad faith made or imputed in said bill to their codefendants, or to the State of Tennessee.

20. And these respondents, further answering, say, that as soon as practicable after hearing of the pendency of this suit, they, with others, whose names are contained in the list hereto attached, marked Exhibit No. 1, respectfully requested the said trustees under the said mortgage to take the necessary steps to protect their interest against the claim of the complainant and other holders of Tennessee bonds, which he is wrongfully seeking to establish as a lien in his behalf prior to the first lien which the said trustees under the aforesaid mortgage hold for the benefit of the said mortgage bond holders, and further authorized them to use their names or any number thereof conjointly with their own, or if they should so elect alone, in prosecuting the legal resistance which they desired said trustees to make against said wrongful claim of the complainant on behalf of himself and other holders of Tennessee bonds.

And these respondents say, that the said trustees have declined to appear in this cause in their own names, being advised that, as they are all citizens of the State of New York, and of the same State with the complainant, the nature and limits of the jurisdiction of this Court in this case forbids and prevents them so to do, and for that reason these respondents appear in their own names and behalf, and in behalf of all others whose names are in said list hereto attached, and all others similarly situated, who may choose hereafter to come in, and insist that, by reason of the premises, the claim of the complainant in the bill of complaint is without equity, and that the said mortgage to the said Iselin, Wilson, and Stevenson, for the uses and purposes therein mentioned, and for the benefit and security of the holders of the bonds therein described and intended to be secured, is the only subsisting lien on the said railroad and property therein conveyed and mortgaged.

21. And these respondents, therefore, by reason of the premises, pray that this answer may be taken as a cross-bill, and that the complainants and their codefendants may be made defendants thereto, and compelled to make answer unto, and that on final hearing this honorable Court will order, adjudge, and decree that said deed of trust and mortgage, herein set forth, to the said Iselin, Wilson, and Stevenson, trustees as aforesaid, for the benefit and security of the holders of the bonds therein described, is, in respect to the claim of the complainant, and of all other holders of the bonds of the State of Tennessee, the best and only lien and incumbrance on said property therein described, and that these respondents and those whom they represent may be forever quieted in their said right and title under the same and the said mortgage, against the claim of the complainant and all other holders of

bonds of the State of Tennessee, aforesaid, and that they be perpetually enjoined from hereafter setting up their claim as aforesaid, and for such other and further relief as these respondents and complainants in said cross-bill may in equity and good conscience, and according to the usages and practice of courts of chancery, be entitled to.

MATTHEWS, RAMSEY & MATTHEWS,
Solicitors for Defendants.

STANLEY MATTHEWS,
Of counsel.

State and County of New York:

Personally appeared before me, ...

.....

and made oath that he is the agent and attorney in fact, authorized to represent the respondents above named, who are aliens and non-residents, and that the facts stated in the foregoing answer are true to the best of his knowledge, information, remembrance, and belief.

....

Sworn to and subscribed before me, this....day of....., 1879.

.....

APPENDIX.

ANSWER OF THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY (SUED BY THE NAMES OF THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY, AND THE NASHVILLE AND CHATTANOOGA RAILROAD COMPANY), TO THE BILL OF COMPLAINT OF CALVIN AMORY STEVENS, FILED AGAINST RESPONDENT IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE. No. 2463.

Respondent, reserving the benefit of all proper exceptions to the many errors and imperfections of said bill, in answer thereto, says as follows:

Respondent is a corporation, chartered by the State of Tennessee, December 11, 1845, with powers as mentioned in said bill, by the name of The Nashville and Chattanooga Railroad Company; its name being subsequently changed to Nashville, Chattanooga and St. Louis Railway (not Railroad Company, as complainant has it). Complainant's bill is filed against respondent by its present corporate name except for said slight misnomer, and also by its former corporate name, as if the two names designated distinct defendants, instead of, as is the fact, one and the same corporate entirety.

Exhibit A, mentioned in said bill has not been furnished to respondent, which, therefore, can neither admit nor deny its correctness; but respondent supposes its contents to be matters of judicial cognizance.

The copy of the act of February 11, 1852, set out in the bill, is substantially correct, except in its punctuation and italics; but respondent dissents very widely from complainant's construction of said act.

Respondent is advised that the bonds issued under said act, and the amendments thereto, were obligations of the State of Tennessee alone. The State being payer, and the bearer the payee, and the names of the companies nowhere appearing thereon. Nor was any special record kept by the State of what particular bonds were issued to each company;

though, as the record was kept of all State bonds, whether issued under the internal improvement laws or for general purposes, it is, of course, practicable, by sufficient research, to trace any State bond.

The internal improvement bonds were not supposed, at the time they were issued, to be any thing more than mere State bonds. They were sold and purchased without any reference to what companies they were issued, and on precisely the same footing as other State bonds issued for general purposes. There was no difference of price. It was not imagined that the respective railroads were in any contingency, primarily or secondarily, liable upon the bonds of the State issued to them. This is an afterthought, not conceived until the State seemed likely to repudiate her bonds, when, indeed, the notion of shifting off the State debt upon the railroads, did receive some countenance, individual and official, not wholly unexpected; and it is barely possible that some persons may have, by this time, convinced at least themselves that they always regarded the bonds, in the hands of their purchasers as liens upon the railroads.

Respondent is advised that the lien reserved by the State upon the issuance of her bonds under the internal improvement laws, was for her own benefit exclusively—and that, too, as the creditor, not the surety, of the companies; and that the purchasers of the bonds have never had any interest in said lien. Also, that while various provisions were made looking to the security of the State in different contingencies, the mode in which it was contemplated that the lien on account of the issuance of the bonds should be discharged, was through the operation of a sinking fund, to begin five years after the completion of the respective companies, the amount of said fund being originally one per cent. of the amount of bonds issued, but subsequently increased, said fund to be applied to the purchase of any bonds of the State, to be thereupon assigned to the governor of the State, and paid into the treasury; and the amounts of the payments to be credited upon the amounts which had been issued.

These credits, of course, could be only as between the State and the companies, as the bonds themselves would be outstanding in the hands of the purchasers.

In addition to the lien retained by the State upon the railroads to which her bonds were issued respectively, she reserved the right of such further legislation as might be necessary to protect her interest and secure her from loss on account of the issuance of her bonds.

It would appear to be incontrovertible that the State reserved a lien for her own benefit as the creditor of the companies; so that if there be a lien also for the benefit of

the bondholders, it must be the case of a distinct and independent lien, arising from the very same words. Surely it must be very far-fetched construction that can yield so remarkable a result as this.

It is true, that section 3 of the act of February 11, 1852, declares "that, so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon such section," etc., but the subsequent language, "and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage without a deed from the company, for the payment by said company of said bonds with interest thereon, as the same becomes due." This shows very clearly what the act as a whole evinces unmistakably that the lien is exclusively for the benefit of the State as the creditor of the company on account of the bonds issued; the lien attaching to the road section by section in the process of construction, upon its completion the whole amount of the bonds issued constituting a lien upon the entire road.

Section 4 provides explicitly that "the said lien or mortgage of the State shall have priority over all other claims existing or to exist against said company."

Exhibit B to said bill sets forth, with substantial correctness, what it purports to contain.

Exhibit C is a substantially correct copy of one of the internal improvement bonds of the State of Tennessee.

It is true, that $395,000 of bonds of said State were issued to respondent, but complainant seems to misconceive the occasions and purposes of their issuance.

$ of said bonds were issued under the act of March 20, 1858, to aid in the construction of what is known as respondent's Jasper Branch, extending from Bridgeport, Alabama, to Jasper, Tennessee, all of said branch road being without the Middle District of Tennessee, and these bonds never constituted a lien, except upon said branch road, or at least that part of the same lying within the State of Tennessee; and $ of said bonds were issued under the act of November 4, 1859, to aid in the improvement of that portion of respondent's road extending from Stevenson, Alabama, to Chattanooga, Tennessee, all of it being without the Middle District of Tennessee; and said bonds never constituted a lien, except on said portion of said road, or at least that part of the same lying within the State of Tennessee.

Respondent denies that $157,000 of said $395,000 of bonds are now outstanding, and says that the true amount is $.

Respondent does not know whether the holders of these are numerous or not, nor whether they reside in foreign countries and in different parts of the United States or not, nor whether complainant holds or owns any of said bonds, or any coupons of any; nor can respondent admit the details, or any of them, at the bottom of page 16 of the bill, as to the numbers, letters, and color of said $395,000 of bonds, but requires proof of all said matters if material.

It is true, that the $395,000 of bonds were all sold, and respondent supposes that such of said bonds as are now outstanding have unpaid coupons from January 1, 1876, inclusively, as the State paid no interest then, nor has paid any since.

Respondent would show that the aid extended to it by the State of Tennessee, in the original construction of its road, except the Jasper Branch, was in the shape of an indorsement by the State of the bonds of respondent, to the amount of $2,000,000, secured by a first mortgage on its road, antedating the issuance of the said $395,000 of State bonds. Afterward, respondent being indebted to the United States, in the amount of $1,000,000, for which it had issued its 4 per cent. bonds, securing the same by a mortgage upon its road from Nashville to Chattanooga, and, needing money to procure bonds of the State to be used in the purchase of the Nashville and Northwestern Railroad, and moreover in the discharge of its indebtedness to the State on account of said $395,000, respondent executed its own 7 per cent. bonds to the amount of $6,680,000, and, to secure the same, mortgaged its entire road, including what was formerly the Nashville and Northwestern Railroad, and respondent, after setting aside $1,000,000 of said bonds, as a provision for the $1,000,000 of 4 per cent. bonds, held by the United States, made use of the residue in taking up said $2,000,000 of its bonds indorsed by the State of Tennessee in paying for the Nashville and Northwestern Railroad, and in discharging its indebtedness to the State on account of said $395,000.

It is true that respondent proceeded under the provisions of the legislation of 1869 and 1870, referred to by complainant's bill, in discharging so much of its indebtedness on account of said $395,000 of bonds as was paid off by it in other bonds than these.

And respondent is advised that said legislation was perfectly valid, and that none of holders of said bonds were in anywise concerned therein, the State alone being their debtor, and the lien on account of the issuance of said bonds such as it was, and the statutory remedies existing for the benefit of the State exclusively.

The charges of said bill as so the inception of the "project" of treating the liens upon the railroads of the State as the absolute property of the State, are utterly untrue. Nobody ever doubted, until very recently, that these liens were the absolute property of the State, and respondent supposes that very few entertain any serious doubt of it even now.

The conduct of the State since the war evinces very clearly that she did not regard herself as merely a trustee of said liens for the benefit of the bond holders, and the conduct of the bond holders, until very recently, evinces with equal clearness that neither did any of them view the matter in that light.

During the war, the railroads of the State either lay idle or were operated by the two contending parties.

At the close of the war, the interest on the bonds of the State was unpaid, and many of the railroads that had received State aid were insolvent. Many fell into the hands of receivers, but they were, without exception, operated at a heavy loss. In the vain hope of revitalizing the roads of this class, the State issued to them bonds as follows :

Edgefield and Kentucky	$525,000
Nashville and Northwestern	1,767,000
Memphis, Clarksville and Louisville	540,000
McMinnville and Manchester	400,000
Winchester and Alabama	856,000
Southwestern	503,000
Knoxville and Kentucky	2,150,000
Knoxville and Charleston	816,500
Cincinnati, Cumberland Gap and Charleston	1,241,000
Rogersville and Jefferson	226,000
Total	$8,024,500

Surely, if the State had regarded herself as a mere trustee, she would not have made these large advances. And she did more; she twice funded the unpaid interest on the bonds issued to the companies before the war, as well as the interest on those issued afterward, amounting to millions, besides making no payments of interest.

Every expedient was tried in vain, and no alternative was left but for the State, under her reserved right of further legislation, to provide for a sale of the delinquent roads.

The idea of selling the delinquent railroads was entertained by the State, at least, so early as December 7, 1867. Section 15 of the act of that date provided "that if the several railroad companies, or either of them, to which the bonds of the State have been loaned by this act, or former

acts, shall fail for two consecutive years to pay the interest that may accrue upon the bonds loaned to them severally, then, in that case, the governor, secretary of state, and comptroller may, at their discretion, sell said railroad track, railing, rolling stock, etc., upon such terms and conditions as they may deem best to secure the interest of the State, and shall retain of the proceeds of said sale the amounts loaned to said companies and the interest due on the same, with expenses of said sale."

Respondent knows nothing whatever of any agents of the railroad companies, in 1869 or 1870, drafting bills for the legislature of Tennessee, which, as modified, became the acts of February 25, 1869, and January 2, 1870.

Respondent conjectures that for this portion of his bill complainant drew upon his imagination solely, and that it has no foundation in fact.

About all that is true of the statement as to the opinion of Edward H. East, is that he did express such an opinion. An opinion had been prepared by a distinguished lawyer of Alabama upon the subject of the nature of the State's lien upon her railroads, with reference to the question of the priority of a mortgage, which one of the companies proposed to execute to secure its bonds, with the proceeds whereof the indebtedness of the company to the State was to be discharged. This opinion was sent to the attorney of said company at Nashville, by whom it was submitted to Mr. East, who united with said attorney in subscribing the opinion; whereupon it was forwarded to distinguished counsel in New York, who, after an independent examination of the questions involved (if indeed they can be seriously regarded as questions), came to the same conclusion; and this view of the matter was thereupon accepted and acted upon by capitalists in New York in the negotiation of the mortgage bonds of said company.

But none of the officers of respondent ever saw this opinion; nor does respondent believe that any member of the legislature ever saw or even heard of it, as it was published only in pamphlet form, and very few copies were printed. The act of December 7, 1867, embodying the same view of the rights of the State as that taken by the opinion, was passed long before the preparation of the opinion.

Respondent is advised that it is quite true that the acts of 1869 and 1870, referred to by complainant, did not, in any respect, affect any rights of any of the bondholders, and that neither did any of the subsequent legislation, nor the proceedings resulting in the sales of delinquent railroads, affect any such rights—as none of the bondholders ever *had* any rights capable of being impaired by any such legislation

or proceedings—their only right being to be paid by the State of Tennessee—the lien upon the railroads, and the statutory remedies provided by the internal improvement laws, existing, as aforesaid, exclusively for the benefit of the State as a creditor of the companies.

The receivers appointed, from time to time, by the State to operate delinquent railroads accounted to the State alone. No attempt was ever made by any bondholder to hold any of them accountable, nor did any bondholder ever manifest the slightest concern as to who was appointed receiver of any road, though it was notorious that divers of said receivers were guilty of flagrant mismanagement, if not even of worse.

Any surplus in the hands of any receiver was always appropriated by the State to its own uses, but no complaint was ever made of this by any bondholder, nor was any attempt ever made to reach the funds in any receiver's hands though the State was, at the time, in default as to the interest on the bonds issued to the particular road among others.

When the receivers did not realize enough to pay the operating expenses of their roads, and to keep them in safe condition, it was notorious that the State would frequently make large appropriations of additional bonds to make up the deficiency, thereby swelling the incumbrance upon the roads, yet no bondholder ever manifested the slightest concern at any thing of the kind.

Respondent is informed that complainant has been, and is, the secretary of an association in New York city, representing the great bulk of the bonds of the State of Tennessee issued to the railroad companies, and that he and his associates have been perfectly familiar with the claim of said State to the exclusive benefit of said lien, as evidenced by nearly every statute upon the subject of State aid to internal improvements. It was notorious, and was well known to them, that for several years prior to the sale of the delinquent roads, it was the intention of said State to enforce its lien, claimed exclusively as aforesaid, by a sale of said roads.

From the passage of the act of February 25, 1869, to the sales of said roads, nearly three years elapsed, during which divers act were passed in furtherance of this intention, creating a commotion, with which the entire railroad world was astir. The proceedings to effect the sales of the delinquent roads were notorious, and were perfectly well known to complainant and his associates, and so was the action of respondent in executing the $6,680,000 of its aforesaid bonds, and securing them by what purported to be a first mortgage on its entire line; a large portion of these

bonds, as was well known to complainant and his associates, being intended to be applied in procuring State bonds, to be used in payment for one of the delinquent roads.

The Nashville and Northwestern Railroad, purchased by Respondent at the sale under the State's decree, and the mortgage executed by respondent, purporting to be a final lien on said purchased road, the bonds issued by respondent containing on their face a certificate to this effect by the secretary of State of the State of Tennessee.

Complainant and his associates were perfectly well aware, as was everybody else, even remotely interested, that in consequence of the purchases of the delinquent roads, to be paid for in Tennessee bonds, the bond markets in New York and elsewhere was greatly excited, immense fluctuations occurring in the prices of Tennessee bonds, some $9,000,000 of which were purchased in a short time by respondent and others in open market, for the avowed purpose of using them in payment for said railroad, claiming that such payments were in full discharge of the lien of the State of Tennessee.

It was notorious, and was perfectly well known to complainant and his associates, that the companies purchasing delinquent railroads were claiming the right to them free from every incumbrance, and that, in order to raise the means to procure the State bonds necessary to pay for them, they were issuing their own bonds—known as substitution bonds—purporting to be first liens on the purchased roads, the amount of these substitution bonds issued being some $20,000,000, which were sold in open market mostly in New York city. It was also notorious, and equally well known to complainant and his associates, that the purchasing roads, finding their purchases in wretched condition, expended thereafter enormous sums in repairing (in some instances almost reconstructing) them and in developing their business.

Yet, down to about the time of the commencement of the present suit—some ten years after the passage of the act of February 25, 1869—not a single bondholder ever took any step or gave out any utterance showing that he imagined that he had the smallest interest in any of the foregoing matters.

So that it is sufficiently apparent that it was not doubted by the bondholders any more than it was by anybody else, that the lien upon the railroads and remedies provided by the internal improvement laws were for the exclusive benefit of the State of Tennessee.

The idea upon which complainant's bill is founded, that the bonds issued by the State of Tennessee to her railroad companies, under her internal improvement laws, constituted

in the hands of their purchasers a lien upon their respective roads. The State holding the lien as a trustee for the bond holders was never conceived by any one until very recently, when it was produced by the ingenuity of astute counsel, stimulated by the exigency of a desperate situation, the State, the sole debtor upon the bonds in question, refusing to pay and being unsuable.

And now, having fully answered complainant's bill, respondent prays to be hence dismissed with costs.

EAST & FOGG,
R. McP. SMITH.

The following seal of said Nashville, Chattanooga and St. Louis Railway is affixed by our authority.

E. W. COLE,
President.

[SEAL.)

R. C. BRAMFORD,
Secretary.

Exhibit No. 1.

LIST OF COMPLAINANTS, HOLDERS OF NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY FIRST MORTGAGE SEVEN PER CENT. BONDS.—$6,800,000 LOAN.

Chas. Burckhardt.....	Basle, Switzerland.	$13,000
Emilie Vonder Muhll..	Basle, Switzerland.	6,000
William Barbey.....	Geneva, Switzerland.	9,000
Edward Fatio.....	Geneva, Switzerland.	4,000
Wm. Iselin & Co.....	Havre, France.	25,000
Georgine Latham.....	Havre, France.	4,000
Chas. Vischer.....	Basle, Switzerland.	4,000
Henry Saladin.....	Geneva, Switzerland.	1,000
Chas. Vonder Muhll...	Basle, Switzerland.	3,000
Sophie M,liusVonWiller	Milan, Italy.	15,000
Chas. Diggelmann.....	Zurich, Switzerland.	5,000
Samson Borceau.....	Lausanne, Switzerland.	5,000
Ad. Yoon.....	Paris, France.	10,000
Chas. Von Wuralt.....	Zurich, Switzerland.	2,000
Henry Freymond.....	Paris, France.	2,000
Caroline Tscharner....	Havre, France.	10,000
Bourgeois Pestalozzi....	Zurich, Switzerland.	7,000
Louise Iselin.....	Basle, Switzerland.	15,000
Henrietta Iselin.....	Basle, Switzerland.	1,000

Exhibit No. 2.

DEED OF TRUST OR MORTGAGE OF THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY TO ADRIAN ISELIN, R T. WILSON, AND V. K. STEVENSON, TO SECURE THE PAYMENT OF $6,800,000 BONDS. DATED JULY 1873. PAYABLE JULY 1, 1913.

THIS INDENTURE, made the first of day July, A. D. one thousand eight hundred and seventy-three, between the Nashville, Chattanooga and St. Louis Railway, a corporation created, organized, and operated under and in pursuance of the laws of the States of Tennessee, Alabama, Georgia, and Kentucky, and herein designated party of the first part, and Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, of New York, and herein designated party of the second part.

Whereas, As the Nashville and Chattanooga Railroad Company purchased the Nashville and Northwestern Railroad; and,

Whereas, In pursuance of law, the name of the combined roads has been legally changed to the Nashville, Chattanooga and St. Louis Railway; and,

Whereas, By virtue of said purchase, and of the laws under which the said first party was created, and of its organization, and in the exercise of its corporate rights, powers, and franchises, the said first party became and is vested with all and singular the corporate rights, powers, privileges, and franchises, and likewise vested with, and owner and occupier of, all property, real, personal, and mixed, and of all debts due, choses in action, rights of way, contracts, and all and every other interest whatsoever, which were held, owned, and lawfully possessed or exercised by, or which in any way or manner belonged or appertained respectively to the Nashville and Chattanooga Railroad Company, and the Nashville and Northwestern Railroad Company, corporations created and organized under, and by virtue of, the laws of the respective States of Tennessee, Alabama, Georgia, and Kentucky, as fully and effectually as the same rights, powers, and privileges, franchises, property, debts, contracts, rights of way, and other interests were held, owned, and exercised by the said last named corporations, or either of them, at the time of the consummation of the organization executing these presents; and,

Whereas, Said Nashville, Chattanooga and St. Louis Railway has paid in part, and will pay in full, to the State of Ten-

nessee, the purchase-money for the Nashville and Northwestern Railroad, and has also paid in part, and will pay in full, under the laws of the State of Tennesssee, the indebtedness of the Nashville and Chattanooga Railroad Company, for all bonds loaned it by said State, and will likewise deposit in the hands of the comptroller of the State of Tennessee, as prescribed by the act of 1871, chapter 144, section 2, of the laws of the State of Tennessee, fourteen hundred and twenty-five thousand dollars of this issue of first mortgage bonds, herein secured, being equal to the amount of bonds indorsed by the State of Tennessee for said Nashville and Chattanooga Railroad Company, now outstanding, and which fourteen hundred and twenty-five thousand dollars of six per cent. bonds, and one million dollars bearing four per cent. per annum interest, and held by the United States government (against which latter sum an equal amount of the issue of bonds here secured are to be reserved, and set apart to be hereinafter issued, by the party of the first part, to be used only in paying off and discharging the said one million dollars, so long as the aforesaid liability of one million dollars, or any part thereof, remains unpaid), these two amounts of fourteen hundred and twenty-five thousand dollars, and one million dollars, are all the bonded obligations of any kind, other than the issue therein secured, of said corporation; and,

Whereas, To enable the said party of the first part to raise money with which to liquidate, pay, satisfy, and fully discharge the indebtedness incurred in the purchase, reconstruction, and equipment of the Nashville and Northwestern Railroad, and also for the purpose of perfecting its line of railway, and enlarging the capacity, and extending the operating facilities for the business thereof, and also for the purpose of paying at maturity the present outstanding bonds and indebtedness, as above stated, the said party of the first part, acting in its regular annual convention of its stockholders, and by and through its board of directors, has resolved to issue and dispose of its bonds to an amount not to exceed twenty thousand dollars per mile on the main line and branches of its railroad, and to secure the payment of the same by a first mortgage, or deed of trust, on all property and franchises of said company; and,

Whereas, The party of the first part has prepared and executed, or will hereafter prepare and execute, its bonds of one thousand dollars ($1,000) each, numbered from one (1) to six thousand eight hundred (6,800) inclusive, to the amount of six million eight hundred thousand dollars ($6,800,000), dated July 1, 1873, one million dollars ($1,000,000), of which to be set apart as aforesaid, to be

hereafter issued, shall be of such rate of interest, not exceeding seven per cent. per annum in currency, or six per cent. per annum in gold, and in such form as may be hereafter prescribed by the said party of the first part; but falling due at like time with the bonds of five million eight hundred thousand dollars, hereinafter mentioned, and the remaining five million eight hundred thousand dollars ($5,800,000), payable in lawful money of the United States, in New York, forty (40) years after date, bearing interest at the rate of seven per centum per annum, with coupons or interest warrants attached, payable semi-annually in lawful money of the United States, in New York; or payable in gold coin of the United States, and bearing interest at the rate of six per cent. per annum, payable in like gold coin of the United States, at New York, are, with the coupons to be thereto annexed, and the certificates to be indorsed thereon, to be in the following forms, that is to say:

United States of America.

FIRST MORTGAGE BOND.

$1,000. $1,000.

No. ——. No. ——.

The Nashville, Chattanooga and St. Louis Railway promises, for value received, to pay the holder of this bond, on the first day of July, nineteen hundred and thirteen, the sum of one thousand dollars, in lawful money of the United States, in the city of New York, with interest thereon, in the meantime, at the rate of seven per cent. per annum, payable in like lawful money at New York city, semi-annually, on the first days of July and January in each year, on presentation and surrender of the annexed interest warrants, or when the bond is registered, and without coupons, to the registered owner thereof, on demand.

This bond, with others issued and to be issued, amounting in the whole to not more than six million eight hundred thousand dollars ($6,800,000), bearing interest not exceeding seven per cent. a year in currency or six per cent. a year in gold, is secured by a first mortgage lien on the railway and franchises, and all the property of said railway, to Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, of New York, as trustees, bearing date the first day of July, one thousand eight hundred and seventy-three, and shall pass by delivery or by transfer on the books of the company. After a registration of ownership, certified hereon by the transfer agent of the company, no transfer, except on the books of the company, shall be valid unless the last transfer be to bearer.

In witness whereof, the Nashville, Chattanooga and St. Louis Railway has caused this bond to be signed by its president and secretary, and its corporate seal to be hereunto affixed, at the city of Nashville, State of Tennessee, the first day of July, Anno Domini, one thousand eight hundred and seventy-three.

——, *President.*

——, *Secretary.*

This is to certify that the lien of the State of Tennessee, on the Nashville and Northwestern Railroad, and on the Nashville and Chattanooga Railroad, now merged in the Nashville, Chattanooga and St. Louis Railway, has been paid and satisfied as follows, viz. :

By the payment in full to the State of Tennessee, for the purchase-money of the Nashville and Northwestern Railroad, and by the payment in full for the loan of the bonds of the State of Tennessee to the Nashville and Chattanooga Railroad, and by a deposit in my hands, in the manner required by the act of 1871, chapter 144, § 2, of dollar for dollar, of the issue of consolidated bonds to be held against the outstanding bonds of the Nashville and Chattanooga Railroad Company, indorsed by the State.

———, *Comptroller of the State of Tennessee.*

And the coupons, annexed to which bonds are in the following form :

$35.00. $35.00.

The Nashville, Chattanooga and St. Louis Railway, will pay to the bearer, in the city of New York, thirty-five dollars, in the lawful money of the United States, on the first day of ——, ——, for semi-annual interest on bond No.——.

———, *Secretary.*

FORM OF CERTIFICATE OF TRUSTEES.

We hereby certify that this is one of the bonds issued under the mortgage herein referred to. ———,

———,

———,

Trustees.

United States of America.

FIRST MORTGAGE BOND.

$1,000. $1,000.

No. ——. No. ——.

The Nashville, Chattanooga and St. Louis Railway promises, for value received, to pay to the holder of this bond, on the first day of July, nineteen hundred and thirteen, the sum of one thousand dollars, in gold coin of the United States, in the city of New York, with interest thereon at the rate of six per cent. per annum, payable in like gold coin, at New York city, semi-annually, on the first days of July and January in each year, on presentation and surrender of the annexed interest warrants, or when the bond is registered and is without coupons, to the registered owner thereof, on demand.

This bond, with others issued and to be issued, amounting in the whole to not more than six million eight hundred thousand dollars, bearing interest not exceeding seven per cent. a year in currency, or six per cent. a year in gold, is secured by a first mortgage lien on the railway and franchises, and all the property of said railway, to Adrian Iselin, Richard T Wilson, and Vernon K. Stevenson, of New York, as trustee, bearing date the first day of July, one thousand eight hundred and seventy-three, and shall pass by delivery, or by transfer, on the books of the company. After a registration of ownership, certified hereon by the transfer agent of the company, no transfer, except on the books of the company, shall be valid, unless the last transfer be to bearer.

In witness whereof, the Nashville, Chattanooga and St. Louis Railway has caused this bond to be signed by its president and secretary, and its corporate seal to be hereunto affixed, at the city of Nashville, State of Tennessee, the first day of July, Anno Domini, one thousand eight hundred and seventy-three. ——, *President.*

——, *Secretary.*

This is to certify that the lien of the State of Tennessee, on the Nashville and Northwestern Railroad, and on the Nashville and Chattanooga Railroad, now merged into the Nashville, Chattanooga and St. Louis Railway, has been paid and satisfied, as follows, viz :

By the payment in full to the State of Tennessee for the purchase-money of the Nashville and Northwestern Railroad, and by the payment in full for the loan of the bonds of the State of Tennessee to tha Nashville and Chattanooga Railroad, and by a deposit in my hands, in the manner re-

quired by the act of 1871, chapter 144, § 2, of dollar for dollar of this issue of consolidated bonds, to be held against the outstanding bonds of the Nashville and Chattanooga Railroad Company, indorsed by the State.

———, *Comptroller of the State of Tennessee.*

And the coupons annexed to which bonds are in the following forms:

$30.00 30.00.

The Nashville, Chattanooga and St. Louis Railway will pay to the bearer, in the city of New York, thirty dollars, in gold coin of the United States, on the first day of—— ——, for semi-annual interest on bond.

No. ——. No.——.

———, *Secretary.*

FORM OF CERTIFICATE OF TRUSTEES.

We hereby certify that this is one of the bonds issued under the mortgage therein referred to. ———,

———,

———,

Trustees,

Which coupons are to be issued with the engraved signature of the said company, and when thus issued by said company, are to be binding upon it as if such signature were written by the secretary.

Now, therefore, this indenture witnesseth: That for the purpose of securing and making more sure and certain the payment of the sums of money mentioned and provided for in the above mentioned bonds, to the aggregate amount of six million eight hundred thousand dollars, bearing even date herewith, and each and every one of them, with the interest thereon, according to the true intent and meaning thereof, and in consideration of the recited premises, and the sum of one dollar to the said first party in hand paid by the parties of the second part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged by the said party of the first part, the Nashville, Chattanooga and St. Louis Railway, the party of the first part aforesaid, has granted, bargained, sold, assigned, transferred, and conveyed, and by these presents does grant, bargain, sell, assign, transfer, and convey unto Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, the parties of the second part, their heirs and assigns forever, and to their successor or successors in the trust, and assigns,

all and singular, the estate and property, real, personal, and mixed, and all fixtures, rights, privileges, franchises, easements, under leases, terms and parts of terms, agreements, covenants, and contracts, of all and every kind, held and owned or occupied by said party of the first part, or whereunto it is entitled; including especially all and singular the railroads and railways of said company, with the appurtenances thereof, from and including the terminus and depot at Chattanooga, in the county of Hamilton, in the State of Tennessee, and thence, *via* Stevenson, in Jackson county, in the State of Alabama, to the city of Nashville, in Davidson county, in the State of Tennessee; thence, *via* McKenzie, in Carroll county, in the State of Tennessee, to and including the terminus in the town of Hickman, on the Mississippi river, in Fulton county, State of Kentucky; being a distance of about three hundred and twenty-one miles of main line, and also and including the line from the town of Wartrace, in Bedford county, State of Tennessee, to the town of Shelbyville, in said Bedford county, State of Tennessee, the distance from said Wartrace to Shelbyville being eight miles; also, including the line from the town of Bridgeport, in the county of Jackson, in the State of Alabama, to the town of Jasper, in the county of Marion, in the State of Tennessee, said distance from Bridgeport to Jasper being eleven miles, including the terminus and depot in each and all of said towns. Making a total length of main line and branches of three hundred and forty miles.

Together with all and singular, the lands, tracks, lines, rails, bridges, ways, rights of way, and materials, buildings, piers, wharves, erections, fences, walls, fixtures, privileges, rights and interests, real estate, personal property, choses in action, leasehold, and other things of and belonging to said party of the first part, of every kind, nature, and character, in either of the States of Tennessee, Alabama, Georgia, and Kentucky; the said lands in the city of Nashville being about thirty acres, and in the city of Chattanooga about seventeen acres, and all the tolls, income, issues, and profits to be had or derived from the same, or any part or portion thereof, or from any part or portion of said term or terms, or either of them; and all right to receive or recover the same, and all railway stations and depots, with all the appurtenances necessary and convenient for the sole, complete, and entire use and operation, as well as maintainance of the said road or railways, owned or leased by said first party, and also all the rolling stock, locomotives, engines. tenders, cars, carriages, tools, and machinery, now owned, or hereafter to be acquired, by said party of the first part, belonging or appertaining to said railroad and railways, so owned as afore-

said; and also all the improvements or additions made or to be made to any or all of said properties, estates, railroads or railways, and their appurtenances, by said party of the first part or by others. But this provision shall not be construed to include other railroads, or parts of roads, which the party of first part may hereafter purchase or construct.

Also all and every estate, interest, property, or thing, as well real or mixed as personal, which the said party of the first part owns or holds, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation, and enjoyment of all or any of its railroads, railways, leases, and property, rights, privileges, and franchises, or any part or portion thereof; and also all rights and privileges to use the said road-bed, tracks, sidings, turnouts, and switches, constructed at the execution of these presents, or which may or shall be hereafter constructed for the convenient use of said railroad or railways, or any of them, owned or operated by said first party, as fully and effectually as the said company, party of the first part, is or may be by law entitled to have or acquire, and all the rights, privileges, and franchises of the said party of the first part, pertaining to the railroads or railways hereinbefore mentioned, or any of them, or the operation, use, or enjoyment thereof. But nothing herein contained shall be held, understood, or construed to prevent said party of the first part from selling, hypothecating or otherwise disposing of any money or securities received from proceeds of any debts of claims now due, or which may hereafter become due, to said company, or from disposing of, by and with the consent in writing of the parties of the second part or their successors in the trust, given under the power in that behalf hereinafter contained, any lands or other property and effects not forming part of said railways, and not essential or necessary to be retained for the said railways, depots, or station grounds, nor required for the construction, maintenance, or convenient use and operation of the said railways.

Provided, That the said first party shall diligently proceed to apply all such means and proceeds to improving and equipping said railways, and other like necessary purposes thereof; and,

Provided also that no default shall have been made, and at the time remain, in the payment of the interest or principal of any of the bonds hereby secured; and,

Provided further, That the trustees, for the time being, under this mortgage, shall have full power, upon the request of the party of the first part, from time to time, to release from the lien and operation of this mortgage, and permit the party of the first part to

convey and dispose of any lands or property not at the time forming part of said mortgaged railways, which, in the judgment of the trustees, shall not be requisite for use, for or in connection with said railroad, or the maintenance, use, or operation thereof, or which may have been held for a supply of fuel, gravel, or other material, and be no longer required therefor; and also to release and permit to be conveyed and disposed of as aforesaid, any lands not occupied by the then existing track, which may have become disused by reason of a change of the location of any station house, depot, shop, or other building connected with the said railroad, or any straightening or alteration of the line of the road, and such land occupied by the track and adjacent to such station house, depot, shop, or other buildings, as the said parties of the first may deem it expedient, and determine to disuse or abandon by reason of such change, and to consent to any such change, and to such other changes in the location of the track, or depot, or other building as shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect.

Provided, That any lands or properties which may be acquired for permanent use in substitution for any so released, shall be conveyed to the trustees, upon the trusts of these presents; and the trustees shall also have full power to allow the said party of the first part, from time to time, to dispose of such portions of the equipment, machinery, and implements at any time held and acquired for the use of the said railroad as may have become unfit for use; provided, that such old equipment, so disposed of, shall be replaced by new which shall be subject to the effect and operation of this mortgage.

To have and to hold the said railroads and appurtenances and equipments, and estate, property, rights, privileges, franchises and interests above conveyed or transferred,or intended intended so to be, together, with all and singular emoluments, incomes and advantages, tenements and hereditaments, and appurtenances thereto belonging to or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, unto the said parties of the second part, and their heirs, successors and assigns as aforesaid, for the equal, *pro rata*, security and benefit of all such persons or corporations as shall become or be, from time to time, the lawful owners or holders of the above described bonds to the aggregate amount of six million eight hundred thousand dollars, or any of them, or such of the same as shall be issued without preference of priority of any of such bonds over any of the others, by reason of

priority in the time of issue thereof, or otherwise, howsoever, and upon the trusts and for the uses and purposes herein declared.

Provided always, and these presents are made and executed upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of the said bonds or obligations intended to be secured hereby, and each and every of them, the principal sums of money therein mentioned, at the maturity thereof, according to their true intent and meaning, and shall also pay the interest thereon accruing. at the times and in the way and manner therein, and in the coupons provided, according to the true intent and meaning of these presents, that then, and from thenceforth, this indenture, and the estate hereby granted, shall cease, determine, and be utterly void and of none effect, without any other release or formal reconveyance, re-entry, acknowledgment of satisfaction, or any other act whatsoever.

And the said party of the first part, in consideration of the premises, hereby covenants and agrees to and with said parties of the second part, their successor and successors, in said trust and assigns, that the said party of the first part will, at any time or times hereafter, upon the reasonable request of the said party of the second part, its successors or assigns, make, do, execute, and deliver, or cause to be done, made, executed and delivered, all and every such further and other reasonable acts, deeds, conveyances, assignments and assurances in the law for the better and more effectual vesting and confirming the premises, property, rights and interests hereby granted, or intended so to be, and especially for conveying property subsequently to the date hereof acquired by the said party of the first part, and comprehended in the description contained in this indenture, if any such there be, to the said parties of the second part, as trustees, for the uses and purposes of this indenture, and to their successors, heirs and assigns, as by them, or their counsel learned in the law, shall reasonably be devised, advised or required; and further, that the said first party will do and perform all the things on the part of the said first party to be done and performed, as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue of said bonds to the purposes hereinbefore recited or mentioned as the objects thereof; and further, that the said first party will pay unto the holder or holders of the said bonds, respectively, the said principal sums of money therein respectively mentioned, and the interest thereon, and as expressed therein, as the same shall become due and payable.

And it is hereby further covenanted, granted, declared,

and agreed that, in case of default in payment of either principal or interest money secured hereby, and the continuance of such default for two months after such default shall first have been made or suffered, the said first party shall, and will, on demand made, after the expiration of such two months, by the parties of the second part, their successors and assigns, trustee or trustees, for the time being, or their agent or agents, duly authorized in writing, assign or transfer, in due form, to them or their agents so authorized, the actual possession of all the herein-granted and conveyed property and premises herein recited and mentioned, or intended to be embraced in this trust.

And further, that the expense of taking, holding and managing said property and premises, if possession be taken, shall be paid from the income, and, if necessary, from the sale, hereinafter provided for, of the property and premises, by the said trustee or trustees, as the case may be, for the time being.

And further, that in such case, the parties of the second part, or their successors, shall and may, by themselves, or their officers and agents, take and receive, collect and have the income and profits of the said railways and other property, first applying the same to the payment and discharge of all current necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges. And next to the equal *pro rata* payment of all sums of money due and payable for interest upon the aforesaid bonds, issued by the said first party, and hereby secured according to the tenor thereof; and next, should there be any surplus, on account of the principal of such bonds, with *pro rata* equality.

And further, that the said parties of the second part, their successors in said trust or assigns, having entered, as hereinbefore mentioned, into the possession of the premises, property, and estate hereby conveyed, or without having entered into such possession (the said default still continuing), at his or their discretion, and with the approbation of such court or courts of record, either State or Federal, as may have jurisdiction over like trusts in the State of Tennessee may, or on the written request of the holders of at least one-eighth of the bonds hereby secured, and then outstanding and unpaid, shall proceed to sell and dispose, or cause to be sold or disposed of, as such court shall direct or approve, all the premises, property, rights, things, interests, franchises, and estate hereby granted and conveyed, or intended so to be, or as much thereof as shall be necessary to pay and discharge the principal and interest according to the tenor thereof, of all of such of said bonds hereby secured and then

outstanding, as may have been issued by said first party; together with all the benefit and equity of redemption of said party of the first part therein, by *public auction*, either in the city of Nashville, State of Tennessee, or in the city of New York, to the highest bidder, having previously given public notice of the time, place, and terms of said sale, and of the property to be sold, by publishing the same in at least two newspapers of good general circulation in each of said cities, and wheresoever else the trustees may deem expedient, or as may be required by law, at least twice in each week, for a period of at least *ninety days* previous to such sale; and as the attorney or attorneys of the said first party, for that purpose, and by these presents duly constituted and appointed, to make, execute, and deliver to the purchaser or purchasers thereof, a good and sufficient deed, or deeds, of conveyance in the law for the same, granting and assuring to said purchaser or purchasers all such estate, rights, property, franchises, and interests, and to the same extent as the said first party had therein at the date hereof, or at any time subsequent; and also a good and sufficient transfer and assignment of said personal property, choses in action, contracts, and leases; and out of the moneys arising from such sale or sales, it shall be lawful for, and the duty of, such trustees, after first retaining the cost and charges of advertisement, and of the said sale of the premises, and all other unreimbursed sums of money which said trustees or their successors in said trust may have been obliged to pay, by reason of their taking possession of and operating said premises, and a reasonable allowance for their own services, and for legal professional advice, aid, and assistance in effecting and consummating said possession, operation, and sale; then to pay, in so far as such proceeds shall suffice therefor, and in equal *pro rata* proportions in case of deficiency, the principal and interest, whether then due or yet to become due, which shall then remain unpaid on said bonds remaining issued and outstanding, and hereby secured, as aforesaid, for the benefit of, and to be paid to the holders thereof, with *pro rata* equality, and then restore the residue of said proceeds, if any there be, to the said party of the first part, its successors or assigns, or to whomsoever shall be lawfully entitled thereto. *It being* hereby expressly understood that the bonds issued by said first party, and secured by these presents, shall be ratably receivable, if desired, by the holders thereof, in payment of said sale by said trustees or their successors, to the extent of the amount of the net proceeds of such sale, properly applicable to the payment of such bonds respectively; and the sale, when fully consummated, shall be a perpetual bar, both in law and equity, against the said party of the first part, and

all persons claiming, or to claim, the premises, or any part thereof, by, through, or under said party of the first part, subsequent to the date of these presents; and in no case shall any claim or advantage be taken of any stay, valuation, appraisement, or extension or redemption law or laws, now existing or hereafter enacted by any State in which any part of the mortgaged premises may be, by the party of the first part, its successors or assigns. Nor shall there be obtained or applied for, any injunction or stay of lawful proceedings herein or in respect thereof. Nor shall any process be applied for or be obtained by the said party of the first part, its successors or assigns, to prevent, or obstruct, or stay such lawful entry or sale as aforesaid; but the benefit of all present and future stay, valuation, appraisement, extension, or redemption laws, which might otherwise be applicable, is hereby expressly waived by the said party of the first part; and in case of a sale, as aforesaid, the party of the first part hereby waives all right of redemption.

And it is hereby further provided, declared, and agreed, that no bond shall be deemed to be issued under this mortgage, or entitled to the benefit of the security thereby provided, unless there shall be indorsed thereon a certificate signed by the three trustees, for the time being, to the effect that the same is issued under the said mortgage.

And the said party of the first part doth hereby covenant and agree to and with the said parties of the second part, as trustees, for and for the benefit of the holders, for the time being, of the bonds, to the extent of six million eight hundred thousand dollars, to be issued under and secured by this mortgage, and to and with all persons and corporations, who or which shall become, or be lawful owners or holders of any of the said bonds so issued and secured, respectively; that so long as any of the said bonds shall remain outstanding, the said party of the first part shall and will remain and keep up a transfer agency in the city of New York, whereat any and all of the said bonds secured hereby shall, upon the request of the holders thereof, be entitled to be registered in the name of such holder, upon a book of said company, to be there kept for that purpose, and to have indorsed thereon, by the transfer agent, a certificate or statement of being so registered; and such bonds shall be transferable upon such registry by the registered owner or his lawful attorney, which transfer shall be noted on the bond, by indorsement by the said transfer agent.

And any of such bonds shall in like manner be registrable in the name of the holder, upon register book of said party of the first part, to be kept for the purpose at its office

in Nashville, and transferable upon such registry as aforesaid; which registration or transfer upon the registry shall, in like manner as aforesaid, be noted by indorsement upon the bond by the proper officer of the company.

Whenever a bond is registered, either at the transfer agency in New York, or at the company's office in Nashville, the holder may surrender the coupons, if the same shall have been issued with coupons, and in such case the coupons so surrendered shall be canceled, and the interest upon such bond shall thereafter be payable only to the registered owner of the bond, at the time being, or his lawful attorney.

But a bond may be registered, either at the transfer agency in New York or the company's office in Nashville, without surrendering the coupons, but leaving the same in the hands of the holder of the bond; in which case, though the principal of the bond will be payable only to the registered owner, the coupons will be payable to the bearer upon presentation, and will be negotiable by delivery, as if the bond were not registered.

Any bond registered without surrender of coupons, may be at any time transferred on the registry to bearer, after which it will be again negotiable by delivery, as if it had never been registered; but it shall still be entitled to be again registered in the name of the owner, for the time being, in like manner and with like effect, as if the previous discharged registration had never taken place.

And this indenture further witnesseth, that these presents and the said bonds hereby secured, or intended so to be, are made, executed, issued and delivered upon the terms, conditions and agreements following, that is to say:

First. That the actual possession, use, and management of all the hereinbefore granted estate, property, and premises shall be and remain in and with the said party of the first part so long as all the bonds so issued shall be and remain without forfeiture or default in respect of interest or otherwise.

Second. That in case of any vacancy in the said trusteeship hereunder, by the incapacity to act, or the resignation of the said trustees, or from any other cause, all the estate, right, interest, power, and control of the trustee, whose place shall be thus vacated, shall be thereupon divested and cease and determine, but without destroying, or without any discontinuance of the trust; and the said party of the first part shall, or upon its default or omission to take proceedings therefor, for thirty days after notice of such vacancy or incapacity, the holders of not less than ten per centum in amount of the said bonds hereby secured, then

outstanding, may apply to any of the Chancery or Supreme Courts in the State of Tennessee, having jurisdiction in the premises, to appoint a new trustee or trustees, to supply the vacancy ; and such proceedings may be had as often as the like occasion may require for the appointment of a trustee to execute the trust herein declared ; and, when so appointed, such new trustee shall thereupon become vested, for the purposes of said trust, with all the estate, rights, interests, powers, property, and control hereby conveyed or granted to or vested in the trustee, whose successor he shall be, without any further assurance, grant, or conveyance of the same, as fully and effectually as it such appointment had been originally made herein. But if the same shall be required, both the said party of the first part and such new trustee, or either of them, and the retired trustee, or his representative, shall make, execute, and deliver all necessary conveyances and agreements and grant all powers and authorities for that purposes.

Provided further, and it is further declared and agreed, any thing hereinbefore contained to the contrary notwithstanding, that it shall be competent for the holders of a majority in amount of the bonds issued under and secured by this mortgage, and, at the time being, remaining outstanding, by instrument, or concurrent instruments, under their respective hands and seals, to remove any of the trustees, at the time being, under this instrument, other than the three original trustees herein named, whether such substituted trustee shall have been appointed by a court or otherwise; and, by the same instrument or instruments, to appoint a new trustee in place of the one so removed ; and every trustee thus appointed by a majority in amount of the bond holders shall stand in the place of the one so removed, and be vested with, and subject to, the like estate, trust, rights, powers and duties.

And it is further understood and agreed by and between the parties to these presents, that the said parties of the second part, their successor or successors in the said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for acts or negligences of any agent or agents necessarily employed by them, when such agent or agents are selected with proper discretion, or with the approbation of the said party of the first part. And neither trustee shall be answerable for the act, neglect, or default of the other trustee or either of them.

And the said trustees, and their successors, are hereby released from executing the bond required of trustees under section 1974 of the code of Tennessee, and from giving any bond or security as such trustees.

And the officers of said railroad company shall have, at all times, the right to inspect the books kept by the receivers of the road and their agents.

And this indenture further witnesseth, that the said parties of the second part hereby accept the aforesaid trust, and also covenant and agree to and with the said party of the first part to execute the same upon, and subject to, the terms and conditions hereinbefore as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon by both parties to these presents.

And it is hereby provided and agreed that the said trustees and their successors may employ and advise with legal counsel, and that the expense thereof, as well as other personal expenses of the said trustees, for the time being, in the discharge of said trust, and all other their reasonable charges and expenses thereof, including their compensation, shall be paid by the party of the first part, as they are incurred ; and, if not so paid, then the same may be paid or retained out of the trust estate or income on which, or to which, they are chargeable ; and likewise, that the said trustees or their successors shall not be required to act in the execution of said trust, except at their own option, unless the party requesting them so to do shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing. That they, in the execution of said trust, may employ agents and attorneys in fact, to act in their behalf, whenever required to act as aforesaid, except when they may be, or are, required by law to act personally. And also, that all covenants and agreements hereinbefore contained or implied may be executed specifically by and through any of the said courts of competent jurisdiction, as practised by them in like cases of trust.

It is fully understood that any two of the trustees aforesaid, or their successors, shall be sufficient for carrying into effect the purposes of this trust, except certifying the bonds as being issued under this mortgage, which certification must be by three trustees.

In witness whereof, the said party of the first part, in pursuance of authority given by the law, and in conformity with the order of the stockholders, acting in annual meeting, and the board of directors, has caused this indenture to be signed by its president and its secretary, and the corporate seal of the company to be affixed

thereto; and the parties of the second part have hereunto subscribed their names and affixed their seals, the day and year first in this indenture mentioned.

Signed, sealed and delivered
in presence of

Words "dollars so long as," on 3d page written over an erasure. "Rail," on 17th page, written over an erasure. "However," on 22nd page, written over an erasure." "For that purpose and to have indorsed," on 32nd page, written over an erasure. "Negotiable," on 33d page, written over an erasure; and negotiable," on 34th page, written over an erasure, before executing.

WILLIAM H. CLARKSON,
C. H. BOSHER.

As to Adrian Iselin, Richard T. Wilson, and Vernon K. Stephenson, Trustees—

ADRIAN ISELIN, [SEAL.]
R. T. WILSON, [SEAL.]
V. K. STEVENSON, [SEAL.]
Trustees.

STATE OF NEW YORK,
City and County of New York. } *ss.*

W. H. C. / Tenn. Comm'r. } Personally appeared before me, a commissioner of the State of Tennessee, in and for the State of New York, residing in the city of New York, the foregoing named trustees, Adrian Iselin, Richard T. Wilson, and Vernon K. Stephenson, with whom I am personally acquainted, who acknowledged that they executed the foregoing instrument, for the purposes therein contained.

In witness whereof, I have hereunto set my hand, and affixed my official seal, this 16th day of December, A. D. 1873.

William H. Clarkson, a Commissioner for Tennessee, in the State and City of N. Y.

WILLIAM H. CLARKSON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

STATE OF NEW YORK,
City and County of New York. } *ss.*

I, William H. Clarkson, a commissioner of the State of Alabama, in New York, residing in said City of New York, do hereby certify that Adrian Iselin, Richard T. Wilson,

and Vernon K Stevenson, trustees, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me, on this day, that, being informed of the contents of said instrument, they executed the same voluntarily, on the day the same bears date.

In witness whereof, I have hereunto set my hand, and affixed my official seal, this 16th day of December, A. D. 1873.

William H. Clarkson, a Commisioner for Alabama, State and City of New York.

WILLIAM H. CLARKSON,
Commissioner for Alabama in New York.
117 Broadway, New York City.

STATE OF NEW YORK,
City and County of New York. } *ss.*

Be it remembered, that on the 16th day of December, A. D. 1873, before me, William H. Clarkson, a commissioner of the State of Georgia, in New York, residing in the City of New York, personally appeared Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson. trustees, to me personally known to be the individuals named in, and who executed, the foregoing instrument, who acknowledged that they executed the same for the purposes therein named and mentioned.

In witness whereof, I have hereunto set my hand, and affixed my official seal, this 16th day of December, A. D. 1873.

Willtam H. Clarkson, a Commissioner for Georgia, State and City of New York.

WILLIAM H. CLARKSON,
Commissioner for Georgia in New York.
117 Broadway, New York City.

STATE OF NEW YORK,
City and County of New York. } *ss.*

I, William H. Clarkson, a commissioner of the State of Kentucky, for New York, residing in said City of New York, do certify that the foregoing instrument, from the Nashville, Chattanooga and St. Louis Railway to Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, trustees, was this day produced to me, by the said Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, and acknowledged by the said Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, to be their act and deed.

In witness whereof, I have hereunto set my hand, and affixed my official seal, this 16th day of December, A. D. 1873.

William H. Clarkson, a Commissioner for Kentucky, in the State and City of N.Y.

WILLIAM H. CLARKSON,
Commissioner of Kentucky in New York.
117 Broadway, New York City.

STATE OF TENNESSEE, } ss.
Davidson County. }

On this 7th day of February, 1874, before me, W. G. Ewin, clerk of the county court of said county, personally appeared E. W. Cole, to me personally known, and known to me to be the president of the Nashville, Chattanooga and St. Louis Railway, the grantor described in, and who executed, the foregoing instrument, and W. A. Gleaves, to me personally known, and known to me to be secretary of the said company, and being by me duly sworn, did personally depose and say, that they were such president and secretary, respectively, of the said Nashville, Chattanooga and St. Louis Railway; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was thereunto affixed by said authority of said corporation, and that they, respectively, subscribed their names thereto, as such president and secretary, by like authority.

Witness my hand and seal of office, at office, the 7th day of February, 1874.

(SEAL.) W. G. EWIN,
Clerk.

Exhibit No. 3.

NUMBER XXXVIII. — JOINT RESOLUTION APPOINTING COMMISSIONERS TO SETTLE WITH THE LOUISVILLE AND NASHVILLE RAILROAD.

Resolved by the General Assembly of the State of Tennessee, That the comptroller, secretary of the State, attorney-general of the State, and commissioner of public roads of the State of Tennessee, be, and are hereby constituted commissioners on behalf of the State of Tennessee, to meet and make a settlement with the Louisville and Nashville Railroad Company, and make a report thereof to this session of the General Assembly, if practicable; if not, to the next session of the same,

Be it further Resolved, That if such settlement cannot be made by said commissioners, with said Louisvile and Nashville Railroad, as shall be satisfactory to them, the fact shall be made known to the governor of the State, and he may direct the attorney-general of the State to institute such proceedings against said company as may be necessary to protect the interests of the State.

WILLIAM HEISKELL,
Speaker of the House of Representatives.

SAMUEL R. ROGERS,
Speaker of the Senate.

Dated *May* 5, 1864.

Exhibit No. 4.

SETTLEMENT WITH THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

NASHVILLE, TENNESSEE, *November* 18, 1865.

To the General Assembly of the State of Tennessee:

In obedience to a resolution of your honorable body, entitled "a resolution to appoint commissioners to settle with the Louisville and Nashville Railroad Company," adopted May 5, 1865, the undersigned, as commissioners on behalf of the State, have met the Hon. James Guthrie, president, and Mr. Willis Ranney, secretary of said company, at the State Capitol, for the purpose contemplated in the resolution.

The memorial upon which said resolution is founded, and which, it is said, sets forth the various matters of settlement, has not been furnished to the commissioners, but has been mislaid in one house or the other of the legislature. But from a statement of its contents by Mr. Guthrie, your commissioners are of opinion that the only matter legitimately referred to them, is the indebtedness of said company to the State on account of the aid furnished the company in the shape of bonds loaned to them, and the interest thereon.

It appears from the books of the secretary of State, that said company have, at different times, received the sum of five hundred and sixty thousand five hundred dollars ($560,500) of the bonds of the State, in aid of the construction of their road, and the bridge across the Cumberland, at Nashville. It appears from the books of the comptroller, that the interest on these bonds has been paid up to July 1, 1861. The interest accruing since that time amounts to one hundred and forty-seven thousand one hundred and thirty-one dollars and twenty-five cents ($147,131.25), making the entire indebtedness of said railroad company to the State, seven hundred and seven thousand six hundred and thirty-one dollars and twenty-five cents ($707,631.25). The principal, Messrs. Guthrie and Ranney, on behalf of the said company, proposed to pay over in straight six per cent. coupon bonds of the State, and the interest in coupons of the State now due.

Believing it to be manifestly for the interest of the State to call in this large installment of its indebtedness, and believing, moreover, that the company had a right, under the law regulating the sinking fund, to pay off its entire indebtedness in the bonds of the State, your commissioners accepted the proposal, and executed to the commissioners, on behalf of the company, the following receipt, a duplicate of which is retained in the office of the comptroller:

NASHVILLE, TENNESSEE, *November* 17, 1865.

We, the undersigned, commissioners appointed by the General Assembly of the State of Tennessee, by joint resolution adopted May 5, 1865. "to meet and make settlement, on behalf of the State, with the Louisville and Nashville Railroad Company," have this day met and settled with the Hon. James Guthrie, president, and Willis Ranney, secretary of said company, and have received from them five hundred and fifty-one coupon bonds of the State, for one thousand dollars each ($551,000), nine thousand five hundred dollars ($9,500) in coupons of the bonds of the State now due; also, one hundred and forty-seven thousand one hundred and thirty-one dollars and twenty-five cents ($147,131,-25) in coupons of the bonds of the State, in payment of interest due from said company, accruing since July 1, 1861; making in all, seven hundred and seven thousand six hundred and thirty-one dollars and twenty-five cents, being the total indebtedness of said company to the State of Tennessee, on account of the bonds of the State, received in aid of the construction of said road, and the bridge across the Cumberland River.

Given under our hands, this 17th of November, 1865.

A. J. FLETCHER, *Sec'y of State.*
S. W. HATCHELL, *Comptroller.*
T. H. CALDWELL, *Att'y-General,*
A. W. HAWKINS, *Com. of Roads.*

The bonds and coupons mentioned in said receipt are deposited with the comptroller of the State, and a list of the numbers and amount of the coupons is filed in the office of the secretary of State.

From the statement of Mr. Guthrie, your commissioners are of opinion that the other matters contained in the memorial, grow out of the consolidation of said road with the Edgefield and Kentucky road, by the acts of December 1, 1855, and December 3, 1859, and should be settled by the two companies, unless the latter road should fall permanently into the hands of the State. At any rate, the adjustment of these matters has been waived for the present by consent.

The last installment of interest, amounting to sixteen thousand eight hundred and fifteen dollars ($16,815), was paid by said company into the Bank of Tennessee, on the 9th day of May, 1861, as appears from their receipt. This was two days after the adoption of the Secession Ordinance; but as the law required the payment to be made to the bank, and as your commissioners can not see that the status of the bank was changed at that early day, they consider the

payment legal. The fact that the fund was lost by the bad faith of the bank, does not, in the opinion of your commissioners, furnish any just or legal grounds for recourse on the company.

Respectfully submitted.

A. J. FLETCHER, *Sec'y of State.*
S. W. HATCHELL, *Comptroller.*
T. H. CALDWELL, *Att'y-General.*
A. W. HAWKINS, *Com. of Roads.*

Exhibit No. 5.

STATEMENT SHOWING AMOUNT OF BONDS ISSUED BY THE STATE OF TENNESSEE IN AID OF DIFFERENT RAILROAD COMPANIES, AND WHAT DISPOSITION HAS BEEN MADE OF THE INDEBTEDNESS TO THE STATE IN CASE OF THE SEVERAL RAILROADS.

Sold by Commissioners.

EDGEFIELD AND KENTUCKY R. R.—			
Bonds issued (including $200,000 to E. H. N.)	$1,380,000 00		
Interest funded, January 1, 1866	231,812 00		
Interest unpaid, July 1, 1870	365,220 00		
U. S. claims assumed	130,804 58	$2,107,836 58	
Sold August 26, 1861, for			900,000 00
CIN'TI, CUMB. GAP AND CHARLESTON R. R.—			
Bonds issued	1,373,000 00		
Interest unpaid	242,068 12	1,615,068 12	
Sold October 16, 1871, for			300,000 00
KNOXVILLE AND KENTUCKY R. R.—			
Bonds issued	2,350,000 00		
Interest unpaid	394,380 00	2,744,380 00	
Sold October 10, 1871, for			350,000 00
MCMINNVILLE AND MANCHESTER R. R.—			
Bonds issued	772,000 00		
Interest unpaid	294,037 00	1,066,037 00	
Sold August 15, 1871, for			300,000 00
NASHVILLE AND NORTHWESTERN R. R.—			
Bonds issued	3,222,000 00		
Interest funded, January 1866	396,475 00	3,618,475 00	
Balance interest unpaid, July, 1870			817,725 00
Sold October, 1871, for	2,400,000 00		
ROGERSVILLE AND JEFFERSON R. R.—			
Bonds issued	385,000 00		
Interest funded, January, 1866	38,160 00	423,160 00	
Interest unpaid, July, 1870			96,158 00
Sold March, 1872, for	23,000 00		
WINCHESTER AND ALABAMA R. R.—			
Bonds issued	1,289,000 00		
Interest funded, January, 1866	143,259 00	1,432,259 00	
Interest unpaid, July, 1870			315,309 33
Sold September, 1871	300,000 00		

KNOXVILLE AND CHARLESTON R. R.—		
Bonds issued	710,000 00	
Interest unpaid	85,200 00	
Sold March 22, 1872, for		105,000 00
EAST TENN. AND WEST'N N. CAR. R. R.—		
Bonds issued	400,000 00	
Interest unpaid	36,000 00	
Sold November, 1871, for		20,000 00
MEMPHIS, CLARKSV'LE AND LOUISV. R. R.—		
Bonds issued	1,582,000 00	
Interest funded, January, 1866	312,600 00	1,894,600 00
Interest unpaid		613,986 00
U. S. Claims assumed		380,756 00
Sold September 28, 1871, for	1,700,000 00	
TENNESSEE AND PACIFIC R. R.—		
Bonds issued	1,165,000 00	
Interest unpaid, July, 1870	71,080 00	
Sold August 8, 1872, for		300,000 00

P. S.—

Total bonds issued to railroads	$29,252,000 00
Of these bonds there have been canceled, about	15,800,000 00
Leaving of the original issuance outstanding, about	14,250,000 00

Roads which have Liquidated their Indebtedness.

EAST TENNESSEE AND VIRGINIA R. R.—			
Bonds issued	$2,202,000 00		
Interest funded, 1866.....	250,038 55		
	2,452,038 55		
Less sinking fund paid.....	3,000 00—	$2,449,038 55	
EAST TENNESSEE AND GEORGIA R. R.—			
Bonds issued.....	1,614,000 00		
Interest funded, January, 1866.....	180,277 50		
	1,794,277 50		
Less amount sinking fund paid.....	125,000 00	1,669,277 50	
Total indebtedness of the two above roads, paid August 1, 1870, by East Tennessee, Virginia and Georgia R. R. Co. (consolidated).....		$4,118,316 05	
CENTRAL SOUTHERN R. R.—			
Bonds issued.....	596,000 00		
Interest funded, January, 1866.....	128,160 00—	724,160 00	
TENNESSEE AND ALABAMA R. R.—			
Bonds issued	1,069,000 00		
Interest funded, January, 1866	225,016 00—	1,294,016 00	
NASHVILLE AND DECATUR R. R.—			
Bonds issued.....		350,000 00	
Total paid by the Nashville and Decatur R. R. Co., March, 1871.....		2,368,176 00	
MEMPHIS AND CHARLESTON R. R.—			
Bonds issued.....	1,700,000 00		
Interest funded, January, 1866.....	185,387 45—	1,885,387 45	
Less amount paid on sinking fund...		213,471 20	
Balance paid, July 25, 1877.....		1,671,916 25	
MEMPHIS AND OHIO R. R.—			
Bonds issued.....	2,001,000 00		
Interest funded, January, 1866.....	395,110 00		
Paid, May 25, 1871.....	2,396,110 00		
MISSISSIPPI AND TENNESSEE R. R.—			
Bonds issued.....	398,000 00		
Interest funded, January, 1866.....	22,800 00—	420,800 00	
Less amount paid on sinking fund...		121,000 00	
Balance paid, January 16, 1878....		299,800 00	

MOBILE AND OHIO R. R.—

Bonds issued		1,296,000 00
Interest funded, January, 1866		388,800 00
Paid January 1, 1872		1,684,800 00

MISSISSIPPI CENT. AND TENNESSEE R. R.—

Bonds issued		1,124,000 00
Interest funded, January, 1866		75,180 00
Paid, December 1, 1877		1,199,180 00

NASHVILLE AND CHATTANOOGA R. R.—

Bonds issued		395,000 00
By sinking fund paid		30,835 00
Balance paid, January 1, 1874		364,165 00

Recapitulation.

DEFAULTING RAILROADS SOLD BY THE STATE COMMISSIONERS.—

Bonds issued		14,628,000 00
Interest funded, January, 1866		1,122,306 00
Interest unpaid, July, 1870		3,331,163 12
U. S. Government claims assumed	511,560 00	19,593,029 12
Amount realized by sale of the above roads (sales bearing date July, 1870)		6,698,000 00

ROADS WHICH HAVE SETTLED THEIR INDEBTEDNESS.—

Bonds issued	12,742,000 00
Interest funded, January, 1866	1,850,768 00
Sinking fund paid	493,306 00
Unaccounted for	1,255,700 00

STATE OF TENNESSEE,
COMPTROLLER'S OFFICE,

I, Jas. L. Gaines, Comptroller of the Treasury of the State of Tennessee, do hereby certify that the foregoing is a correct statement as shown by the records and books in this office.

Comptroller's Seal.

WITNESS my official seal and signature, at Nashville, this 8th day of April, 1878.

JAMES L. GAINES,
Comptroller.

Name of Railroads that retired their Debts to the State of Tennessee, and Amount of Same, viz.:

East Tennessee, Virginia & Georgia	$ 4,117,000 00
Nashville & Decatur	2,700,000 00
Memphis & Charleston (of which $213,471.00 was paid as sinking fund)	1,875,000 00
Memphis & Ohio	2,396,000 00
Mississippi & Tennessee (of which $120,000.00 was paid as sinking fund)	420,800 00
Mobile & Ohio	1,684,800 00
Mississippi Central	1,199,000 00
Nashville & Chattanooga (of which $20,800.00 was paid as sinking fund)	395,000 00
	$14,787,600 00

Name of Railroads sold out, and Amounts brought by each.

Edgefield & Kentucky	$ 900,000 00
Cincinnati, Cumberland Gap & Charleston	300,000 00
Knoxville & Kentucky	350,000 00
McMinnville & Manchester	300,000 00
Winchester & Alabama	300,000 00
Rogersville & Jefferson	23,000 00
Nashville & Northwestern	2,400,000 00
Knoxville & Charleston	105,000 00
East Tennessee and Western North Carolina	20,000 00
Memphis, Charleston & Louisville	1,700,000 00
Tennessee & Pacific	300,000 00
	$6,698,000 00
	*21,485,600 00
Amount of bonded debt of the State, estimated January 1, 1870, about	40,000,000 00
	$18,514,400 00

*To which is to be added $707,000.00, Louisville & Nashville R. R., which was paid before the date at which the above debt of the State was estimated; hence, it is not deducted, making a total of $21,485,600.00.

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE,

[*In Equity.*]

CALVIN AMORY STEVENS, on behalf of himself and others, Holders of Tennessee State Bonds issued to the Nashville and Chattanooga Railroad Company,

vs.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY AND OTHERS.

The answer of Calvin Amory Stevens to the cross-bill filed by Charles Burchhardt and others, admitted as defendants by stipulation:

This complainant, respondent to the cross-bill which he has consented that Charles Burchhardt and others might file subject to conditions specified in a certain stipulation, for answer to said cross-bill, or so much and such parts thereof as he is advised it is material for him to answer unto, but without waiving any benefit or right of exception thereto that can or may be had to the same on account of the errors, uncertainties and imperfections therein contained, admits the existence of the several statutes, public documents and records and private writings set out

or referred to in the cross-bill, but for greater certainty as to the contents thereof, prays leave to refer to the said documents upon the trial.

Respondent denies each and every allegation in the said cross-bill with actual knowledge of which he is charged; and as to the other matters of fact alleged affirmatively in the said cross-bill, except in the particulars above admitted, and respondent has no knowledge or information, and therefore demands strict proof of the same.

And the complainant further says that the telegraphic letter of December 11, 1879, addressed by him to the Governor of Tennessee, and laid before its legislature, was written for his signature by Richard T. Wilson, President of the Memphis and Charleston Railroad Company, and by him procured to be signed by the said complainant, and by said Wilson sent to said Governor at a time when this complainant was wholly ignorant of the substitutions now claimed to have been effected, and by which it is alleged that the liens upon the railroads of the defendant company and other companies in the State of Tennessee have been satisfied, and that said telegraphic letter relates to bonds of the State of Tennessee, then held by this complainant, of which only a very small minority in amount were secured or are now claimed to have been secured by any lien whatever.

Respondent is advised that he need not answer or controvert in this pleading the various conclusions of law and presumptions set forth in the cross-bill, but that the same are best answered by the language of the Statutes of Tennessee.

Wherefore this respondent prays to be hence dismissed with his reasonable costs.

E. L. ANDREWS,
GEORGE HOADLY,
Solicitors and of Counsel for Complainant.

UNITED STATES OF AMERICA,
Souuthern District of New York. } ss:

On this 8th day of March, A.D. 1880, before me personally appeared Calvin Amory Stevens, who being duly sworn, says that the matter and things stated in the foregoing answer are true, so far as the same are stated of his own knowledge, and so far as stated on information and belief he believes it to be true.

W. H. DELANCY,
Notary Public Westchester County.
Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

Replication of Charles Buckhardt and others. 1

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

2

CALVIN AMORY STEVENS, on behalf of the holders of Interal Improvement Bonds of Tennessee, issued to The NASHVILLE AND CHATTANOOGA RAILROAD COMPANY,

vs.

THE NASHVILLE AND CHATTANOOGA RAILROAD COMPANY and THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD COMPANY. 3

The repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and 4 prove their said cross-bill to be true, certain and

5 sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things these repliants are and will be ready to aver and prove as this Honorable Court shall direct, and humbly pray as in and by
6 their said cross-bill they have already prayed.

MATTHEWS, RAMSEY & MATTHEWS,
Solicitors for Defendant.

7

8

IN THE

UNITED STATES CIRCUIT COURT,

For the Middle District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, on behalf of holders of Internal Improvement Bonds of the State of Tennessee issued to railroads,

vs.

The Louisville & Nashville Railroad Company,

and

Fifteen other suits on behalf of bondholders, against Fifteen other Railroad Companies.

SOME OF THESE SUITS ARE PENDING IN THE EASTERN, SOME IN THE MIDDLE, AND OTHERS IN THE WESTERN DISTRICT OF TENNESSEE.

OPINION BY S. L. WITHEY, DISTRICT JUDGE, WESTERN DISTRICT OF MICHIGAN.

SEPTEMBER 25th, 1880.

These are suits in equity pending in the Circuit Courts of the United States for the Districts of Tennessee, brought by complainants on behalf of holders of Internal Improvement Bonds of the State of Tennessee against various railroad companies to whom the bonds were issued, to aid in the construction of their several

lines of railroads, and against all other persons interested.

They were argued together in April and May last at Nashville.

The object of the suits is to have a lien in favor of the bondholders declared and established upon the railroads of the several defendant companies, and a Receiver appointed for the collection of the accrued and accruing interest, the interest having been in default since July 1st, 1875. The principal is not due.

The plaintiffs' contention is, briefly, that the Acts passed by the Legislature of the State of Tennessee in 1852, to grant aid to the railroad companies by a loan to them of the bonds of the State, imposed a lien upon the railroads, as security to the holder of the bonds and to the State—payment to the holder would operate as indemnity to the State. Inasmuch as the State and the companies are in default in the payment of the interest since July, 1875, the bondholders by these suits seek to have a lien in their favor established upon the roads.

Statement.

The General Assembly of the State of Tennessee passed, February 11, 1852, an Act known as the "Internal Improvement Act of the State of Tennessee," extending aid to railroad companies by a loan of State bonds, the proceeds to be used in ironing and equipping the roads. Prior to the time of passing the Act, there had been issued State bonds for various purposes, of which above three and a half million dollars were outstanding. The State of Tennessee was now in good credit, her six per cent. bonds brought a premium in the money markets of the world, as did also, subsequently, her bonds issued to the defendant railroad

companies under the Act, in question, and Acts amendatory thereof, which bonds are the subject of controversy in these suits. The scheme of internal improvement now adopted was to issue to each Company six per cent. bonds to the amount of eight thousand dollars a mile in installments—afterwards extended to ten thousand dollars,—the first when a section of thirty miles of road was completed ready for the ties, and the subsequent installments upon completion of each additional section of twenty miles; afterwards changed to ten miles. The bonds are transferable by delivery, run not less than thirty nor more than forty years from the respective dates of issue. The interest matures semi-annually, and, with the principal, is payable in New York. They were paid to the railroad company and old in open market without endorsement or guarantee. The State was invested by the terms of the statute with a lien upon each section of the company's road as soon as the bonds for that section were issued, and upon final completion of the road such lien was to attach to the entire road and its equipments. The company was to be incapable of creating any lien conflicting with that in favor of the State.

The amount of the lien claimed by complainants in behalf of such bondholders upon all the railroads is about fifteen million dollars. The litigation, however, affects the holders of between thirty and thirty-five million dollars of other mortgage bonds secured upon these roads and issued under authority of the General Assembly conferred in 1869–70 to enable the aided companies to repay to the State the bonds loaned to them. The holders of the last-mentioned bonds claim to have a first lien upon the roads, and appear in these suits, with the defendant companies, to contest the lien

claimed by complainants and their associate bondholders.

The interest of the State debt was in default from July, 1861, to 1866, during the Civil War, when the price of her bonds had depreciated in value to less than fifty per cent. of their face. The storm of war left the railroads of the State without money, credit or rolling stock, and their roads and bridges going to decay. The first Legislature of Tennessee, after the storm had passed, assembled in 1865, when the State and the railroad companies were alike in a condition of bankruptcy. Provision was now made by the State to fund all her over-due bonds and interest coupons outstanding into new bonds. In 1866 and 1867 the State issued additional bonds to some of these railroad companies to aid them to build bridges and repair their roads, the State reserving a lien and imposing terms and conditions like those in the act of 1852, but somewhat modified.

In 1869–70 none of the principal of the railroad aid bonds issued under the acts of 1852, or acts amendatory thereof, had matured, but now the General Assembly of the State, to enable the respective companies to repay any part of the principal of their indebtedness for bonds loaned to them, passed an act permitting payment in any of the outstanding bonds of the State.

To obtain money to purchase State bonds for surrender, they were severally authorized to issue mortgage bonds upon their respective roads and equipments corresponding in denomination with the State aid bonds, and deposit them with the Comptroller of the State, to be by him delivered to the company or its agent whenever, and as Tennessee State bonds were by the company surrendered and cancelled. These mortgage bonds were by law declared to be a first lien on the road and equipments of the company issuing them,

and as evidence to the purchaser the Comptroller was required to and did certify upon each bond that it was "secured by first mortgage."

Many of the companies availed themselves of this legislation, and under its sanction and authority an aggregate of between thirty and forty million dollars of such mortgage bonds were by the companies issued and sold, and are now outstanding.

Other railroad companies did not avail themselves of the provisions of the law of 1869–70. They continued to be in default as to the payment of interest, and as to payment annually into the sinking fund required by statute. Proceedings by the State were therefore commenced in the State Court of Chancery, and decrees of foreclosure and sale obtained.

At the sale the State was purchaser. These foreclosed roads were subsequently sold by the State and new companies organized. Payment by the purchaser was made to the State in any outstanding Tennessee State bonds at their face value, and the purchaser was invested with all the right and title of the State.

The State, as before stated, had funded her over-due bonds and interest coupons into a new bond under the law of 1865, and in February, 1870, another act was passed to again fund unpaid interest that had accrued on the public debt, together with the floating debt of the State, and all that might become due up to 1874. Holders of Tennessee bonds, including holders of internal improvement bonds issued to railroad companies, generally accepted the provisions thus made for retiring over-due interest coupons, as they had done under the act of 1865. The State of Tennessee however, again defaulted in her interest January, 1, 1875,

and subsequently openly repudiated her bonded debt, for the payment of which the faith and credit of the State were solemnly pledged.

The Statute.

The Internal Improvement Act of February 11, 1852, will alone be referred to, as it contains all the provisions necessary to be considered. The lien is declared by the third section which is as follows:

"That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid, including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with the said lien or mortgage without a deed from the company, for the payment by said company of said bonds, with the interest thereon as the same becomes due."

The requirement, by section five, as to the payment of interest is, that fifteen days before it falls due the company shall deposit in the bank of Tennessee—the State's fiscal agent—

"an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that said interest has been paid or provided for, and if said company fail to deposit said interest as aforesaid, or furnish the evidence as aforesaid, it shall be the duty of the Comptroller to report that fact to the Governor,"

who is immediately to put the road into the hands of a Receiver to operate it in behalf of the State until the default is made good, and then to surreuder the road to the company.

By the section,

"The Comptroller is authorized, and it is made his duty upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds as may not be provided for by the company as provided for in in this act, and the Comptroller shall report thereof to the General Assembly from time to time."

The requirement as to the payment by the company of the principal of the bonds by section seven is:

"That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company. And bonds so paid in and the interest accruing thereon, from time to time, shall be held and used by the State asa Sinking Fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be credited as aforesaid and cancelled. And should said company fail to comply with the provisions of this section, it shall be proceeded against, as provided in the fifth section of this act."

viz, as in case of failure to meet installments of interest.

It will be noticed that as these bonds were to be issued in installments at different periods, they would therefore fall due at different times.

The sixth section provides:

"That if said company shall fail or refuse to pay any of said bonds when they fall due, it shall be the duty of the Governor to notify the Attorney General of the district in which is situated the place of business of said company, of the fact; and thereupon, said Attorney General shall forth-

with file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee against any loss on account of the issuance of said bonds, by ordering the said railroad to be placed in the hands of a receiver, ordering the sale of said road, and all the property and assets attached thereto or belonging to said company, or in such other manner as the Court may deem best for the interest of the State."

By section twelve,

"the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act; but in such manner as not to impair the vested rights of the stockholders of the companies."

What the parties claim.

Complainants contend that the statutory lien is to be regarded as an instrument of security taken for the benefit of the bondholders; or more fully stated, that the legislation and action of the State under it were effectual to fix upon the railroads respectively a lien not merely for the indemnity of the State of Tennessee, but also to secure the payment of its bonds to their holders; that the State became trustee of this lien for the benefit of the holder of the bonds, which lien inured to their benefit as *cestius que trusent* of the State, by force of the express contract to that effect in the law creating the security, as well as by necessary legal implication from the relations of the parties, which no subsequent dealings between the railroad companies and the State could discharge. Again it is said:

"the first or primary object of the act was to compel each aided company to pay its debt directly to its true creditor, the lender on the bonds. This was effected by the usual and proper process, a lien pure and simple for the payment of the bonds upon the estate of each aided company enforcible in equity in case of default."

On the other hand defendants' answers state the opposing view thus:

"that the said statutory mortgage was taken by the State in its own behalf and for its own benefit, and not as trustee for its bondholders, and that said statutory mortgage was conditioned solely for the payment by the Company to the State of the company's indebtedness to the State for the bonds loaned to it, and in respect of both principal and interest such payment was conditioned to be made by the company to the State before the corresponding amount of interest or principal would become due or payable by the State to the holders of the State bonds; * * * that by the statute two entirely independent and distinct debts were created, one from the State to the bondholders upon its bonds payable to bearer, resting upon the faith and credit of the State, the other an indebtedness from the railroad company to the State for the amount of the State bonds loaned to it, and that the statutory mortgage was given to secure this latter direct obligation from the railroad company to the State, with which the bondholders had no connection or concern."

It is further said that whether the engagement of the company was to pay to the State or to holders of the bonds is not important, and that if under the terms of the act it shall be held that the companies were to make payment to the bondholders, such payment was to be merely in relief of the State from the ultimate performance of its obligation—but all the while the obligation of the State remained—was to be in exoneration of the State but did not modify its undertaking on the bond and created no privity between the bondholders and the company. That such an undertaking by the company would be to indemnify the State by payment of the

bond in its stead, and that the obligation was to the State alone, and one in which no one else had or was intended to have any legal or equitable interest, much less any direct participation and right of intervention or control. That the relation between the railroad company and the holder of State bonds was that merely of vendor and purchaser of negotiable securities, passing by delivery and without endorsement and therefore created no relation between them of debtor and creditor.

Opinion.

I cannot refrain from expressing personally and officially my acknowledgements for the complete and exhaustive arguments by learned and eminent counsel which distinguished the hearing and submission of these important cases. I approach their consideration with all the aid which the most consummate and elaborate arguments can afford. The opinion will not extend over all the debated ground.

Have the holders of internal improvement bonds, loaned by the State of Tennessee to a railroad company, under the act in question, any enforcible right by contract or otherwise in the statutory lien that is reserved to the State of Tennessee for the payment of the principal and interest of the bonds as they matured? Section three provides:

"That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section * * * and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien * * * for the payment by said company of said bonds, with the interest as the same becomes due."

This section of the statute relates only to the first division of thirty miles, but the lien there declared is

by another part of the act applied and extended to each additional section of twenty miles as fast as completed, and finally to the entire road as security

"for the payment of all bonds issued to the company" (Sec. 4).

The lien upon the property of the company was effected by virtue of the statute upon the issue of the bonds by the State and their acceptance by the company. Unless an intention of the Legislature to secure the purchaser of the bonds can be implied from the act and the dealing of the parties, the claim of complainants to the relief asked in these suits rests upon a mere equity. There is no denial that it was the State of Tennessee which was invested with the lien, but it is said that she occupies the position of a surety holding security for the payment of the debt, which security the creditor—the bondholder—can upon default of the principal debtor—the railroad company—avail himself in equity; that default by the company and by the State in the payment of the interest having occurred, the State becomes and is a trustee of this lien for the benefit of the bondholder. It was the State and the railroad company that dealt together in this matter. The State dictated the terms upon which it would grant aid, and the company accepted those terms without reference to what the purchaser of the bonds would say or claim. The bonds were loaned by the State and passed over to the company to be sold for money to aid or accommodate the company. The bonds were accepted by the company upon the understanding and agreement: 1. That the state was invested with a lien upon the company's railroad and property to secure "the payment by said company of said bonds, with the interest thereon as the same becomes due." 2. That the inter-

est should be paid by the company to the financial agent of the State at least fifteen days before it should become due, or satisfactory evidence be produced that it had been paid or provided for; and 3, that the principal of the bonds should be paid by the company by means of a sinking fund in the State Treasury, created by the purchase and deposit therein of Tennessee interest bearing bonds, supposed to be adequate for the purpose of enabling the State to meet its bonds at maturity.

There is nothing in any of these stipulations out of which the relation of the State to the bondholder is changed from that of a principal debtor to a surety. Nor does it appear how the company becomes debtor to the bondholder in any degree whatever. There is no express promise on its part to the bondholder, nor is any contract relation implied between him and the company. Section three contains no language importing such promise. It declares merely that the State of Tennessee shall be invested with a lien for the payment of the bonds by the company. The State imposes the lien if its aid is accepted, and as a condition of the grant. The language may imply a promise by the company accepting the aid to pay the State, but there is no obligation of the company to pay the bondholder, resulting either from positive law or from contract express or implied.

The lien was clearly "reserved in favor of the State." It was the State of Tennessee that upon the issuance of the bonds was invested with the lien or mortgage without deed. No other lien could have priority over or come in conflict with the lien of the State. The company was to deposit the interest money and exchange with the State's fiscal agent at least fifteen days before it became due, or satisfactory evidence that the interest had been paid or provided. All the suits and proceed-

ings under the Act are given as remedies exclusively to the State. The State might have a decree and sell the road for non-payment of any bond. The bond was made by the State for the accommodation of the railroad company and was sold in open market, without any promise by the company, other than what is implied to the State by accepting the benefit of the Act.

There is no express declaration of trust on the part of the State. It is sought to raise a trust out of the language of the Act, and the principle is invoked applicable to a security given by a debtor to his surety conditioned that it shall be void if the mortgagor pays the debt on which the mortgagee is surety, viz: that in such case the mortgage will be held both as an indemnity to the surety and as a security for the debt; the surety being regarded in equity as trustee for the benefit of the creditor and as having no right to discharge or defeat the trust, unless it be to a purchaser for a valuable consideration without notice.

The rule is not questioned. But it is not conceived that this rule would control the express terms of a mortgage or other instrument of security, nor render wholly nugatory the effect of an express reservation of a right of disposition of the mortgaged property by the mortgagee as is provided in the statute under consideration.

It is not within the province of equity to import conditions into the mortgage. The conditions of this statutory lien were, that the company should deposit the interest money and exchange with the State's fiscal agent or furnish evidence of prior payment, and should also pay into the treasury the means of providing a Sinking Fund for the ultimate payment of the bonds. This dealing was to be with the State—as to the payment of the principal it must have been—as to the pay-

ment of interest it was optional with the company—and there being no express covenant by the company a compliance with the conditions named in the mortgage would discharge the lien.

We do not overlook a claim made by one of complainants' counsel, that the intention of the Legislature is to be ascertained by the language of the statute declaring the lien, but we think the statute must be construed together, and that the requirements put upon the mortgagor—the conditions of his mortgage—when read in connection with the declaration, many times repeated in the statute, that the lien is the lien of the State, should have great weight in determining the legislative intention. The meaning of the legislation is to be declared from the words and subject matter of the statute. It is the scope and meaning of the whole enactment, rather than the literalism of words and phrases that are to govern; the signification of the entire Act and not a single clause determines the intention of the law maker. Thus section six, considered with other provisions of the Act, is important as reserving to the State the right through proceedings in Court to sell the road, thereby discharging it from the lien imposed by the statute.

The fact that the State might discharge the lien in such way imports that there was no intention of the law makers to give a beneficial interest in the security to any one but the State. This view applies with peculiar force where the holder of the security is a State not amenable to the ordinary process of Courts.

This view of the effect of section six upon the construction as to legislative intent is not weakened but fortified by section fourteen, which declares that

"in the event any of the roads shall be sold under the provisions of the Act, it shall be the duty of the

Governor to appoint an agent for the State to attend the sale, and, if necessary to protect the interests of the State, buy in the road in the name of the State; and in case the State shall be the purchaser, the Governor shall appoint a Receiver who shall take possession of the road and property, and use the same as provided for in the fifth section of this Act, and said Receiver shall settle his accounts semi-annually with the Comptroller until the next meeting of the General Assembly."

This section imports three things at least as to a sale: 1, a third person may be a purchaser; 2, the State may be the purchaser; 3, that the purchaser obtains a title discharged of the lien. It is manifest that if a stranger buys he takes title freed from all liens imposed by the act upon the property, and there is nothing in the language of the section or in the act to indicate that the State, becoming purchaser, does not take the property equally free from such lien.

The Receiver appointed by the Governor is to take possession of the road and "use the same as provided for in the fifth section," that is, in like manner, viz.: "run the same and manage the entire road." This he is to do until the next meeting of the General Assembly, when by clear implication the future management or disposition of the road is left to legislative action.

The contract between the State and the company is that the State shall have a lien "for the payment by said company of said bonds," but it is nowhere required by the State, and therefore not assented to by the company, that the latter shall pay *to the bondholder*. It was urged that this language imports payment by the company to the only person then entitled to ask or enforce it. The language must, however, be understood to relate to other parts of the statute which prescribes specifically the manner of payment by the company, viz.: payment annually into the State Treasury of a sum to be employed as a sinking fund.

It is made optional, by section five, with the company, whether it will deposit the interest as it becomes due with the fiscal agent of the State or pay the same to the bondholder, and by section seven the principal was to be paid by setting apart annually after five years from the completion of the road a certain per centum of the amount of bonds issued to the company, invested in any bonds of the State and assigned to the Governor. This sinking fund provision would, within the period which the bonds had to run, place in the treasury of the State an amount sufficient to nearly or quite enable the State to pay the bonds. The Tennessee bonds were generally six per cent., and funded in those the time required would be thirty-three years and two months.

There is nothing in the act to indicate that after the company has complied with these provisions as to interest and sinking fund, and has thus provided the State with the means of payment, that the company was also required to pay to the bondholders. Certainly this was not the condition of the security, as the only way in which a default could occur was by failure of the company to provide for payment of the interest and principal in those specified ways.

But it is said the Sinking Fund was not to be commenced until five years after the particular road should be completed, and that that event might not take place at all or not till half or more of the time which the bonds had to run had expired, so that the period might be wholly inadequate in which to provide a sufficient Sinking Fund for paying the bonds when due, and that this indicates that the lien was not intended as security merely for payment by the company to the State by means of a Sinking Fund in the manner provided. A statute must be construed from the standpoint, the circumstances and surroundings of the lawmakers when

it was enacted; and it would be unjust and repugnant to reason and common experience to assume that the Legislature passed the act in the expectation that the roads would never be finished or would not be completed within a reasonable time. Besides section twelve reserved to the State ample powers to make such modifications in relation to the time for the Sinking Fund to commence and the per cent. annually to be paid into that fund as would fully protect the interests of the State against delay on the part of the railroad company.

Whatever might be said in regard to the evidence, adduced in these cases, of contemporaneous construction through the utterances of State officials in public documents, the action of any department of the State government or otherwise, there is, in the judgment of the court, nothing to change the views which have been expressed.

Chamberlain *v.* St. Paul and Sioux City R. R. Co., 92 U. S., 299, was decided upon a statute and upon facts similar to those in the present cases and is very instructive. The State of Minnesota by a constitutional amendment provided for an issue of its bonds as a loan to the Southern Minnesota Railroad Company, and required such company to convey the lands in question "in trust for the better security of the Treasury of the State from loss on said bonds," and further provided that if the borrowing company should make default in payment of either the principal or interest of the bonds issued by the State, the Governor should proceed to sell the lands held in trust by the State. The company accordingly executed a trust conveyance of the lands to the State, conditioned for the payment of the principal and interest of the bonds issued to that company. The company made default in the payment of interest. The State foreclosed and became the purchaser of the lands which she granted to another corporation, the de-

fendant in the Chamberlain suit. Chamberlain was holder of some of the State bonds, the payment of which was secured by the trust conveyance, and sought to have a lien upon the land declared in his favor.

In the cases at bar, as in that case, the State was primarily liable to the holder of the bonds. In the cases at bar, as in that case, the State reserved to itself the right of foreclosure and disposition of the property. In deciding that case, Justice Field after stating the position of the complainant, viz.: "that the interest which the State took under the trust deed and mortgage was only the right to hold them as security against loss upon its bonds, * * * that this interest was not changed by foreclosure of the mortgage and by purchase of the property by the State," uses the following language:

"The State was primarily liable to the bondholders; and it was only between her and the company that the relation of principal and surety existed.

It may be doubted whether the bondholders could call upon the company in any event. The endorsement made by the President simply transferred the bonds; it was not the act of the company. Be that as it may, whatever right the plaintiff had to compel the application of the lands received by the State to the payment of the bonds held by him, it was one resting in equity only. It was not a legal right arising out of any positive law or any agreement of the parties. It did not create any lien which attached to and followed the property. It was a right to be enforced if at all only by a Court of Chancery against the surety. But the State being the surety here, it could not be enforced at all, and, not being a specific lien upon the property, cannot be enforced against the State grantees."

This was said to be the law of that case, even if the bondholders could have called upon the company for payment. But laying this feature aside, the analogies are as before stated, and whatever right the plaintiffs

have to claim benefit from the security rests here as in that case as a mere equity; there was no legal right because the law did not impose one, and the company made no promise to the bondholders. Such equity created no lien which followed the property; the liability of the State was to the bondholder. She held no relation as surety to him; as in the Chamberlain case, it was only as between her and the company that in any possible view the State could be regarded as surety, and this view would make it necessary to treat the company as the principal debtor to the bondholder, whereas the company was not the principal debtor, nor indeed a debtor to the bondholder in any degree.

The reasoning in the case of Hand *v.* R. R. Co., in the Supreme Court of South Carolina—manuscript—referred to on the argument, cannot all be adopted as applicable to these cases if the conclusions might be.

It is not upon its fact authority. The railrond company made its own bonds and the State guaranteed their payment to the holder by endorsement. The State was secured by a lien upon the company's road, reserved by the statute which authorized the guarantee. As a surety the State assumed contract obligations to the creditor—the bondholder. If a creditor has a right to claim the benefit of security given by the debtor to his surety for the latter's indemnity, it does not follow that the right exists where the principal debtor takes the security from the accommodatee and where the security holder holds no other relation to the creditor than that of debtor, and the giver of the security is neither a debtor or surety to the creditor.

It becomes unnecessary to further consider the effect of the reservation of power to the State under section twelve. The court has already stated that such re-

served power is ample to authorize a modification of the sinking fund provisions, as has been done by increasing the amount to be paid annually into the Sinking Fund, and changing the time for such payment to commence.

It follows that by this judgment neither the foreclosed or the non-foreclosed roads are subject to any lien in favor of the holders of internal improvement bonds issued by the State of Tennessee, under the acts passed by that State, and to which reference has been made.

Other topics presented in the arguments need not be considered.

A decree will be entered in each case, dismissing the bill of complaint therein, with costs to defendants, and it is directed that such decrees be drawn and presented for approval.

Decree.

Circuit Court of the United States,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

(*In Equity.*)

CALVIN AMORY STEVENS, who sues on behalf of himself and other holders of Tennessee State Bonds, issued to the Nashville & Chattanooga Railroad Company,

against

The NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY AND OTHERS.

This cause came on to be heard upon the bill of complaint, the answers thereto, the answer and cross-bill of the defendants Charles Burckhardt, Sophie Mylius Von Miller, Charles Diggelman and Louise Iselin, the answer of the complainant thereto, the replications and the proofs, and was argued by counsel for the respective parties:

5 And the Court now being fully advised thereon, finds:

First.—The equity of the cause to be with defendants.

Second.—That the complainants are not entitled to the relief prayed for.

Third.—That the deeds of trust and mortgage set forth in the answer and cross-bill of the said Charles
6 Burckhardt, Sophie Mylius Von Miller, Charles Diggelman and Louise Iselin, made to the said Iselin and the said Wilson and the said Stevenson, are, in respect to the claim of the complainant, and of all other holders of the bonds of the State of Tennessee, originally loaned by said State to the Nashville and Chattanooga Railroad Company, the best and only liens and incumbrances on said property therein described; and,

7 *Fourth.*—That in respect to the equity of the holders of the bonds thereby intended to be secured, the lien originally reserved by the State of Tennessee on account of its bonds loaned to the Nashville and Chattanooga Railroad Company has been effectually discharged and released.

It is therefore ordered, adjudged and decreed, that the bill of complaint of the complainant be, and the same is hereby dismissed, and that the said Charles Burckhardt, Sophie Mylius Von Miller,
8 Charles Diggelman and Louise Iselin, and all other holders of the bonds secured by the deeds of trust or mortgages, be forever quieted in their said rights and title under the same against the claim of the complainant, and all other holders of like bonds of the State of Tennessee originally issued to the Nashville and Chattanooga Railroad Company, and that they be, and are

hereby perpetually enjoined from hereafter, contrary to this decree, setting up their claims aforesaid. 9

And it is further ordered, adjudged and decreed, that the said complainant pay to the defendants the costs of this suit, to be taxed, and that defendants have execution therefor.

And thereupon came the complainant, at the same time, and prayed an appeal from the foregoing decree, which appeal is allowed, and the amount of the penalty of the bond to be given by them is 10 fixed at one thousand dollars.

Settled and approved this 30th day of October, A. D. 1880.

[Signed.] S. L. WITHEY,
District Judge,
West. Dist. Mich.

11

12

Supersedeas Bond.

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

1

CALVIN AMORY STEVENS, EUGENE KELLY and JOHN T. TERRY, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the NASHVILLE and CHATTANOOGA RAILROAD COMPANY,	In Equity.	2
vs.		
The NASHVILLE and CHATTANOOGA RAILROAD COMPANY and the NASHVILLE, CHATTANOOGA and ST. LOUIS RAILROAD COMPANY.		3

Know all men by these presents, that we, Calvin Amory Stevens, Eugene Kelly and John T. Terry resident of the City and State of New York, and Peter Geddes, Eugene Plunkett and Solon Humphreys, residents of the same place, are jointly and severally held and firmly bound unto the Nashville 4
and Chattanooga Railroad Company and the Nashville, Chattanooga and St. Louis Railway Company in the sum of one thousand dollars each, to be paid to the said The Nashville and Chattanooga Railroad

Company and the Nashville, Chattanooga and St. Louis Railway Company and their successors, for which payments well and truly to be made, each of us doth hereby bind himself, his heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 29th day of December, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately at a regular term of the Circuit Court of the United States in and for the Middle District of Tennessee, held by consent of all parties to the record at the City of Nashville, in said State, a final decree was rendered in the above-entitled cause, dismissing the complainant's bill out of the said Court.

And whereas an appeal from said decree to the Supreme Court of the United States was prayed on behalf of complainants in said suit, namely, Calvin Amory Stevens and Eugene Kelly and John T. Terry, which appeal was granted, and the order granting the same was filed with the clerk of said Circuit Court.

Now the condition of the above obligation is such that if the said Calvin Amory Stevens, Eugene Kelly and John T. Terry shall prosecute the said plea to effect, and answer all damages and costs if they fail to make the said appeal good, then the above obligation to be void; else to remain in full force and virtue.

CALVIN AMORY STEVENS, [SEAL.]
EUGENE KELLY, [SEAL.]
P. GEDDES, [SEAL.]
JOHN T. TERRY, [SEAL.]
EUGENE PLUNKETT, [SEAL.]
SOLON HUMPHREYS. [SEAL.]

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

On this 29th day of December, 1880, before me personally appeared Calvin Amory Stevens, Eugene Kelly, Peter Geddes, John T. Terry, Eugene Plunkett and Solon Humphreys, to me known, and known to me to be the same persons described in and who executed the foregoing bond, and severally acknowledged to me that they executed the same.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public,*
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

CALVIN AMORY STEVENS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

CALVIN AMORY STEVENS.

Sworn to before me, this 29th day of December, 1880.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public,*
Westchester and N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York. } ss.:

EUGENE KELLY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE KELLY.

13 Sworn to before me, this 29th day of December, 1880.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public,*
Westchester and N. Y. Cos

UNITED STATES OF AMERICA,
Southern District of New York. } ss:

PETER GEDDES, being duly sworn and examined,
14 deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

P. GEDDES.

Sworn to before me, this 29th day of December, 1880.

[SEAL.] WILLIAM H. DELANCEY,
15 *Notary Public,*
Westchester & N. Y. Co's.

UNITED STATES OF AMERICA,
Southern District of New York. } ss:

JOHN T. TERRY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities, and property exempt by law
16 from execution.

JOHN T. TERRY.

Sworn to before me, this 29th day of December, 1880.

[SEAL.] WILLIAM H. DELANCEY,
Notary Public,
Westchester & N. Y. Co's.

5

UNITED STATES OF AMERICA, } ss:
Southern District of New York. } 17

EUGENE PLUNKETT, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE PLUNKETT.

Sworn to before me, this 29th day of December, 1880. } 18

[SEAL.] WILLIAM H. DELANCEY,
Notary Public,
Westchester & N. Y. Co's.

UNITED STATES OF AMERICA. } ss.:
Southern District of New York, }

SOLON HUMPHREYS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the 19
sum of two thousand dollars over and above all my debts, and liabilities and property exempt by law from execution.

SOLON HUMPHREYS.

Sworn to before me, this 29th day of December, 1880. }

WILLIAM H. DELANCEY,
[L.S.] *Notary Public,*
Westchester and N. Y. Cos.

20

UNITED STATES OF AMERICA, } ss.:
Southern District of New York. }

WILLIAM H. FARRELL, being duly sworn, deposes and says: I am well acquainted with Eugene Plunkett, one of the sureties named in the foregoing bond and know of my own knowledge that he is worth the sum of two thousand dollars over and above all

his debts and liabilities and property exempt by law from execution.

WM. H. FARRELL.

Sworn to before me, this 30th day of December, 1880.

WILLIAM H. DELANCEY,
[L.S.] *Notary Public*,
Weschester and N. Y. Cos.

UNITED STATES OF AMERICA, *Southern District of New York.* } ss.:

S. NEWTON SMITH, being duly sworn, deposes and says: I am well acquainted with Solon Humphreys one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars, over and above all his debts and liabilities and property exempt by law from execution.

S. NEWTON SMITH.

Sworn to before me, this 30th day of December, 1880.

WILLIAM H. DELANCEY,
[LS.] *Notary Public.*
Westchester and N. Y. Cos.

By the Hononrable John Baxter, United States Judge in and for the Sixth Judicial Circuit, Middle District of Tennessee.

I hereby approve the foregoing bond as to form and manner of execution, and as to the amount thereof, and the sufficiency of the sureties, and direct that the same shall operate as a supersedeas.

Dated January 6th, 1881.

JNO. BAXTER,
United States Judge.

Circuit Court Of the United States,

MIDDLE DISTRICT OF TENNESSEE.

C. Amory Stevens, vs. *The Nashville, Chattanooga and St. Louis Railway Co. et al.*

Same vs. *The Nashville & Northwestern Railroad Company et al.*

Same vs. *The McMinnville & Manchester Railroad Company et al.*

Same vs. *The Winchnster and Alabama Railroad Company et al.*

It is agreed that the following described testimony, so far as relevant and competent, shall be considered as read in each of the foregoing cases, printed copies to be furnished by either of us to the clerk when he makes up the record, as part thereof:

For the Complainant.

1. Printed stipulation signed E. L. Andrews and Ed. Baxter, as heretofore filed in these causes.

2. Printed stipulation signed by George Hoadly and Stanley Matthews.

3. Printed compilation made up by complainant.

4. Record of proceedings, Davidson County Court, printed.

5. Certificate of cash in State Treasury, printed.

6. Printed statement of prices of State bonds, after January 1st, 1870, contained in stipulation of Evarts, Southmayd and Choate and E. L. Andrews.

7. Depositions of C. Amory Stevens, three in number; also of Eugene Kelly, John T. Terry, George Arents, Ed. Baxter, Wm. H. Osborn, Dempsey Weaver and Albert S. Marks.

8. Two depositions of Richard T. Wilson.

9. Printed copy, order of E. M. Stanton, Secretary of War, dated August 8th, 1865.

10. Report (printed copy) Judiciary Committee, W. H. Wisener, Chairman, February 19th, 1869, and copy of Senate and House Journal relative to the bill referred to in said report.

11. Act of February 9th, 1850, sections 1 to 3 inclusive.

For the Respondents.

Nos. 1 and 2 as above, being the two printed stipulations above referred to.

3. Printed compilation made up by respondents

4. Printed record of foreclosure in the Chancery Court, at Nashville, of a cause entitled the State *v.* The Edgefield and Kentucky Railroad Company *et als.*, and only so much thereof as relates to the above respondent, and is filed with their respective answers, all objections on account of its being an incomplete record being waived.

5. Pages 128 to 177, both inclusive, of the printed report of James L. Gaines, Comptroller of the State of Tennessee, to the forty-first General Assembly of the State of Tennessee, made January 6th, 1879.

6. Printed depositions of John C. Brown, Maney Bell, Samuel R. Cruse, John S. Claybrooke, R. C. Jackson, John J. Craig, Campbell Wallace, Neil S. Brown, Columbus Powell, Albert Roberts, D. B. Cliffe, J. W. Drexel, V. K. Stevenson, J. G. M. Ramsey, B. O. White, John M. Fleming, Ira P. Jones, Peter Geddes, J. D. Porter, M. T. Polk and James L. Gaines. The last three were taken by Hon. James Fentress.

The foregoing depositions are such as have been taken in various cases brought by the complainant against the foregoing and other railroad companies in Tennessee.

Also, all depositions and other documentary testimony heretofore filed in the cases named in the caption of this agreement.

While it is agreed that the foregoing depositions and documents may be filed in these cases, it is expressly understood that to make them, or either of them, or any part of either of them, competent in these cases, the testimony must be competent and relevant in these particular cases, and that no special exceptions need be taken to point out irrelevant and incompetent testimony, but its inadmissibility may be pointed out and relied upon in argument or brief, both in the Circuit and Supreme Court.

It is also expressly understood that where any fact is agreed upon in the stipulation signed by Andrews and Baxter, or in the stipulation signed by Matthews and Hoadly, referred to above, it shall not be affected by anything contained in the depositions or other documentary proof agreed to be filed in this stipulation.

It is further agreed that the record of the Exhibits and testimony aforesaid shall be made up by the clerk in any one of these causes, and that the same shall be treated, regarded and considered as the record of the Exhibits, and testimony in each and all of the said causes, and that upon appeal to the Supreme Court of the United States a single transcript of the record of said Exhibits and testimony so made up may be filed as the record of said Exhibits and testimony in each and all of said causes, without filing or docketing any other record except the proper record in each cause so appealed of the pleadings, process, orders and decrees and action and testimony therein, other than that contained in said record of said Exhibits and testimony.

EAST & FOGG.
Sol. for Defendants.
GEO. HOADLEY,
Solicitor for Complainants.

CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT—MIDDLE DISTRICT OF TENNESSEE.

IN EQUITY.

CALVIN AMORY STEVENS, EUGENE KELLY, and JOHN T. TERRY on behalf of the holders of Internal Improvement Bonds of the State of Tennessee, issued to the NASHVILLE and CHATTANOOGA RAILROAD COMPANY,

vs.

THE NASHVILLE, CHATTANOOGA and ST. LOUIS RAILROAD COMPANY.

I, LEWIS T. BAXTER, Clerk of the above named Court, hereby certify that the foregoing is a true copy of the records in the above entitled cause and which are necessary to a hearing in the Supreme Court of the United States, and that the same are prepared according to the request of the solicitors for appellants in this cause.

In testimony whereof, I hereunto subscribe my name and affix the seal of
[L.S.] the said Court the 12th day of September, 1881.

LEWIS T. BAXTER,
Clerk.